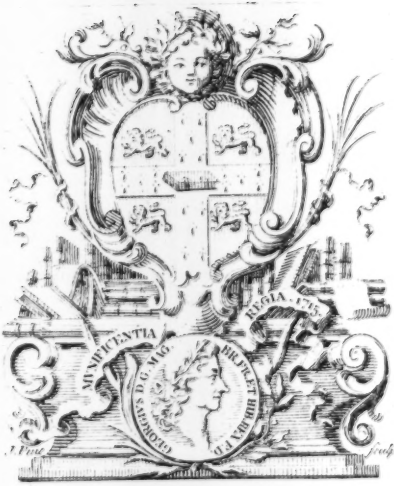
THE PRINCIPLES OF LAW Reduced to PRACTICE.

By J. PHILLIPPS.

Z-16-13

LONDON,
Printed for *Henry Twyford*, *Tho: Dring*, *John Place*, and are to be sold at their shopps. 1660.


MUNIFICENTIA REGIA. 1715.
GEORGIUS D. G. MAG. BR. PR. ET HIBERN. F. D.
J. Vint. sculp.

To the Reader.

AMidſt the many Complaints that have beene taken up againſt the Law, there is not any that ſeemes of Weight, unleſs it be that of it's want of Method. And in truth, that is (not a real) but only a ſeeming Objection: for the Learned know that the Law of England (excepting

1458.14

To the Reader.

AMidst the many Complaints that have beene taken up against the Law, there is not any that seemes of Weight, unlesse it be that of it's want of Method. And in truth, that is (not a real) but only a seeming Objection: for the Learned know that the Law of England (excepting

Statutes) *is a* customary, *and no* written *Law: and therefore it is no wonder, that the* Professors *thereof, have not been curious in the methodizing of that* Art, *which has it's force only from* Custome, *and was never committed to* Writing. *But, although it be not capable of* Exquisite Method; *it cannot be denyed but of late times, fair* Essayes *have been made for the better retaining of the same in* memory: *which has been by putting* particular Cases, *under* generall Rules;

Rules; *which, as, to the* younger *Students it must needs be very* helpful; *so, to* Attorneys (*whose practise will not permit them, to peruse the greater Volumes of the Law,*) *it cannot be lesse* usefull. *Having therefore at* spare Hours *Collected the Ensuing* Principles of Law, *and communicated the same to some most* eminent *in that* Profession; *their* approbation *has been such, that it has deemed them worthy the* Publique view. *Wherupon being secured of the*

skill of those Gentlemen, *I confidently commit them to the* World; *not doubting but they will have as good reception abroad, as they have met with in private. For, if I mistake not much, you will find them to come home to your* Business *and* Occasions. *Farewel.*

A TABLE Of the MAXIMS, Disſplaied in this TRACTATE.

A

Acceſſorium non ducit ſed ſequitur ſuum Principale. The Acceſſory followeth the Principal. fol. 1.

A communi observantia non est recedendum. Common opinion, a rule in Law. 2.

Actio personalis moritur cum persona. A personall action ends with the person. Ibid.

Actus Dei nemini facit injuriam. An act of God injureth no man. ib.

Actus legis nulli facit injuriam. An act of Law is injurious to none. 3.

Actus non facit reum nisi mens sit rea. The mind, not the act, maketh a man guilty. ib.

Actus repugnans non potest produci in esse. Contradictions cannot be brought into being. ib.

Actus me invito factus non est meus actus. An act done against my will, is not my act. 4.

Actori incumbit onus probandi. The Plaintiff must prove. ib.

Additio probat minoritatem. Addition

Addition argues the leſſe extent. 5.
Ad proximum antecedens fiat relatio. The Relative has reſpect to the next Antecedent. ib.
Ad quæſtionem Facti non reſpondent Judices. Judges do not decide matters of fact. 6.
Æſtimatio præteriti delicti poſt factum nunquam creſcit. No ſubſequent matter adds degrees of guilt, to a paſt fault. ib.
Affectio, nomen imponit operi. The intention denominates the action. ib.
Affectus punitur, licèt non ſequatur effectus. The affection is puniſhable, though the effect do not follow. 7.
Affirmativum, negativum implicat. An affirmative implyeth a negative. ib.
Agentes & Conſentientes pari pœnâ plectuntur. The actor and the

consentor are equally culpable. 8.

Aliquis non potest esse Judex, in propriâ causâ. None must be judge in his own cause. ib.

Apices juris non sunt jura. Niceties of Law are not Law. 9.

Ambiguum placitum interpretari debet contra proferentem. A doubtfull plea shall be taken strongest against the pleader. ib.

B

Benignæ faciendæ sunt interpretationes chartarum, propter simplicitatem laicorum; ut res magis valeat quàm pereat. Charters admit of a favourable construction, by reason of the Lay-man's ignorance; that the thing may be in force rather than perish. 10.

Benignior sensus in verbis dubiis est præferendus. In doubtfull things,

things, the most favourable construction is to be preferr'd. 87.

C

Causa & origo est materia negotii. The cause of the business is the essence of it. 11.

Caveat emptor. Let the buyer beware. ib.

Certa debet esse intentio & narratio. Counts and Declarations ought to be certain. 12.

Cessante causa, cessat effectus. The cause being gone, the effect ceaseth ib.

Charta non est nisi vestimentum donationis. Charter is, as it were, the garment of the gift. ib.

Communis error facit jus. Common error constituteth a right. 13.

Consensus, non concubitus, facit matri-

matrimonium. Consent, not the sheets, compleats the marriage. ib.

Conditio beneficialis quæ statum construit, benignè secundum verborum intentionem est interpretanda. Beneficiall conditions are to be taken according to the intention of the words. 14.

Consensus tollit errorem. Consent takes away error. ib.

Consuetudo debet esse certa. A custom ought to be certain. 15.

Constructio juris nemini facit injuriam. Favourable construction of Law injures no man. ib.

Consuetudo semel reprobata non potest amplius introduci. A custom once rejected, cannot be used again. 16.

Consuetudo tollit legem. Custom taketh away the Law. 17.

Contraria allegans non est audiendus.

endus. He that alledgeth contradictions, is not to be heard. ib.

Cui licet quod majus est, non debet quod minus est non licere. He that may doe more, can doe lesse. ib.

Cuique naturale est, illud quod procreavit tueri. The Law of Nature commands every one to defend his issue. 18.

Cuilibet, in arte suâ perito, est credendum. The Artist must be believed in his own Art. ib.

Cujus est dare, ejus est disponere. The giver may dispose of his gift. ib.

D

Debile fundamentum tollit opus. A weak foundation defeats the superstructure. 19.

Derivativa potestas non potest esse major

major primitivâ. A derivative power cannot be greater than the primitive. 20.

Destinata tantùm, pro factis non habentur. Things intended shall not be taken for things done. ib.

De fide & officio Judicis, non recipitur quæstio. A Judge's honesty ought not to be questioned. ib.

Dies Dominicus non est juridicus. The Sabbath-day is no day in Law: 21.

Divinatio, non interpretatio est, quæ omnino recedit à litera. It is a guessing, not an interpretation, which wholly leaves the Letter. ib.

Dilationes in lege sunt odiosæ. Dilatory pleas are odious. 22.

Dispositio de interesse futuro, est inutilis. A disposition of a future interest is null. ib.

Do-

Dominus non maritabit minorem in custodia suâ, nisi semel. A Ward shall be forced to marriage but once. 23.

Dormit aliquando jus, moritur nunquam. A right is suspended sometimes, never extinguished. ib.

Doti mulieris parcatur, quia præmium pudoris est. A woman's dower shall be spared, because it is the reward of chastity. 24.

Dona clandestina semper sunt suspitiosa. Under-board gifts are suspitious. ib.

Dos de dote peti non debet. One Dower cannot be made out of another. ib.

E

Ecclesia fungitur vice minoris; meliorem potest facere conditionem, deteriorem nequaquam. The Church exercising

exercising the office of a minor, it may make his condition better, not worse. 25.

Executio juris nulli facit injuriam. Execution of the Law injures none. 26.

Expressio eorum quæ tacitè insunt, nihil operatur. Expression of those things which are understood, work nothing. ib.

Ex nudo pacto non oritur actio. Of a bare agreement, there ariseth no action. ib.

Expressum facit cessare tacitum. An expresse drowneth an implication. 27.

Extra jurisdictionem jus dicenti, non paretur impunè. He that obeys a Judge beyond his commission, shall not go Scot-free. ib.

Exteriora acta indicant interiora animi secreta. The outward actions shew the inward intentions of the mind. ib.

Ex verbo generali aliquid excipitur. Every generall rule has an exception. 28.

F

Facinus quos inquinat aquat. An offence equalleth those that are guilty of it. 28.

Festinatio Justiciæ noverca infortunii. More haste than good speed. ib.

Finis rei attendendus. Mark the end. 29.

Filiatio non potest probari. Legitimation cannot be proved. 30.

Firmior est operatio legis quàm dispositio hominis. The disposition of the Law is stronger than any proviso of man. ib.

Frustra fit per plura, quod potest fieri per pauciora. Much is needlesse, where lesse will serve the turn.

turn. ib.

Furioſus furore ſuo punitur. A mad-man is puniſhed by his own madneſſe. 31.

G

Generale nihil certi implicat. Generals determine nothing. 32.

Generalibus ſemper ſpecialia inſunt. Speciall things are alwaies contained in generals. 32.

Generalis clauſula non refertur ad expreſſa. A generall clauſe is not referred to thoſe things which are expreſſed. 33.

Generalis clauſula non porrigitur ad ea, quæ antea ſunt ſpecialiter comprehenſa. A general clauſe is not extended to thoſe things, which were before ſpecially comprehended. 34.

Generalia ſunt præponenda ſingularibus. Generals are to be prefer'd be-

before particulars. ib.

H

Hæres est pars anteceſſoris. The ſon is part of the father. 35.

Hæres legitimus, est, quem nuptiæ demonſtrant. He is a lawfull heir, whom marriage counteth ſo. ib.

Hæres non tenetur ad debita anteceſſoris reddenda, niſi per anteceſſorem ad hoc fuerit obligatus; præterquam debita Regis tantùm. An heir is not bound to pay his anceſtor's debts, unleſſe to the King, if he be not bound by the deed of his anceſtor. ib.

Hermaphrodita tam maſculo quàm fœmina comparatur, ſecundum prævaleſcentiam ſexûs incaleſcentis. An Hermaphrodite inherits, according to the prevalency of the ſex. 36.

I

Id certum est, quod certum reddi potest. That is certain, that may be made certain. ib.

Ignorantia Juris non excusat. Ignorance of the Law is no excuse. 37.

Ignorantia facti excusat. Ignorance of the fact does excuse. 38.

Ignoratis terminis, ignoratur & ars. The terms not known, the art is not understood. 38.

Impotentia excusat legem. That which cannot be helpt, cannot hurt. 39.

Idem non potest esse agens & patiens. The same cannot be agent and patient. ib.

Impersonalitas nec concludit nec ligat. Impersonality doth not conclude nor bind. 40.

Imperitia, maxima est mechanicorum

corum pœna. Ignorance is the artist's greatest punishment. ib.

Inclusio unius, est exclusio alterius. The including of one thing, is the excluding of another. ib.

Infinitum in jure reprobatur. Infinity is rejected in Law. 41.

In fictione legis semper est æquitas. In the fiction of Law is equity. ib.

In æquali jure, melior est possessio possidentis. In an equall cause, possession is best. 42.

Injuria illata in corpus, non potest remitti. Injuries made upon the body, cannot be remitted. ib.

In ambiguis casibus, semper præsumitur pro Rege. In ambiguous cases, 'tis alwaies presumed for the King. 43.

In disjunctivis, sufficit alterum esse verum. In disjunctives, 'tis sufficient if one of them be true. ib.

In jure, non remota sed proxima causa

causa spectatur. The Law respects the most immediate cause. 44.

Impossibile est unum corpus in duobus locis esse simul. The same body cannot be at two places, at the same time. 46.

In præsentia majoris, cessat potentia minoris. A greater power drowns a lesse. ib.

In quo quis deliquit, in eo de jure puniendus est. In what one offendeth, in the same he rightly suffers. 47.

In omnibus obligationibus, quibus dies non ponitur, præsenti die debetur. Where no time is set, the debt is presently due. ib.

Judicis est judicare secundum allegata & probata. The Judge ought to determine according to proof. 48.

Judicium pro veritate accipitur. Judgment & truth equivalent. ib.

Judicium a non suo judice datum, nul-

nullius est momenti. If Judgment be not given by the proper Judge, it is of no force. 49.

Junior non potest dotem promereri. A woman under nine years cannot have dower. 50.

Jura naturalia sunt immutabilia. The Laws of Nature are immutable. ib.

Ipsa etenim leges cupiunt ut jure regantur. Laws are ruled by equity. 51.

Jura publica anteferenda privatis. Publick rights are to be preferr'd before private. ib.

Jus accrescendi præfertur oneribus. Right of increase is preferred before charge. 52.

Jus accrescendi præfertur ultimæ voluntati. The right of Encrease is preferred before the last Testament. ib.

Jus descendit & non terra. Right, not the Land, descendeth. 53.

Ju-

Justum non est, aliquem ante matrimonium natum, mortuum, facere bastardum, qui toto tempore suo pro legitimo habebatur. It is unjust to make him a bastard, when dead; who was accounted legitimate while alive. ib.

L

Lex est summa ratio. The Law is the perfection of reason. 54.

Licet Tenenti vetus opus reficere, non novum facere. The Tenant may repair, cannot build. 55.

Lex non præcipit inutilia. The Law prescribeth not in vain. 56.

Lex semper intendit quod convenit rationi. The Intendment of the Law is alwaies consonant to reason. 57.

Lex spectat naturæ ordinem. The Law regardeth the order of nature. ib.

Lex non cogit ad impossibilia. The Law forceth not things impossible. 58.

Lex libertati dat favorem. The Law favours liberty. 58.

Lex citius tolerare vult privatum damnum, quàm publicum malum. The Law will sooner tolerate a private injury, than a publick inconvenience. 59.

Liberata pecunia non liberat offerentem. Mony tendered, does not discharge the Obligor. 60.

Linea recta semper præfertur transversali. A right line is alwaies preferred before a collateral. 61.

M

Mala Grammatica non vitiat chartam. Falſ-Latine doth not deſtroy a Deed. 61.

Maritus & uxor, animæ duæ ſunt in unâ carne. Man and wife are two ſouls in one fleſh. 62.

Malus uſus abolendus. An evill uſage is to be aboliſhed. 63.

Maximè pacі contraria ſunt vis & injuria. Violence is contradictory to Peace. ib.

Meliorem conditionem facere potest minor, deteriorem nequaquam. An Infant may better his condition, cannot make it worse. 64.

Minor jurare non potest. An Infant cannot be upon his oath. 65.

Modus & conventio vincunt legem. An agreement doth alter the Law. ib.

Mulieres ad probationem status hominis, admitti non debent. Women are not admitted to prove the condition of a man. 66.

Multa transeunt cum universalitate, quæ per se non transeunt. Many things passe in a croud, which do not passe in themselves. ib.

N

Negatio nihil implicat. A negative implyeth nothing. 67.

Nemo debet bis puniri pro uno delicto. None ought to be punished twice for the same fault. ib.

Nemo potest plus juris in alium transferre quam ipse habet. None can

can transfer a greater right, than he himself hath. 68.

Neminem oportet esse sapientiorem legibus. None ought to aspire to be wiser than the Laws. ib.

Nemo tenetur exponere se infortuniis & periculis. None is bound to expose himself to perill. 69.

Nemo punitur pro alieno delicto. None suffers for anothers fault. ib.

Nemo tenetur prodere seipsum. No man is bound to betray himself. 70.

Nihil quod est inconveniens vel contra rationem, est licitum. Inconveniences are unlawfull. ib.

Non refert an quis assensum præbeat verbis aut factis. It matters not, whether an assent be by words or deeds. 72.

Non afficit conatus, nisi sequatur effectus. The endeavour signifies nothing, unless the effect followeth. 73.

Non est hæres viventis. There is no actuall heir of the living predecessor.

deceſſor. 74.

Non valet pactum de re meâ non alienandâ. A contract, that I ſhould not alien what is my own, is of no validity. 75.

Nullum iniquum in jure eſt præſumendum, No injuſtice is preſumed in the Law. ib.

Nullum tempus occurrit Regi. No time prevaileth againſt the King.

Nullum ſimile eſt idem. No like is the ſame. 76.

Nullus commodum capere poteſt de injuria ſua propria. None can take advantage of his own wrong. 77.

O

Omnis privatio præſupponit habitum. Every privation preſuppoſeth an habit. 78.

Omnia quæ movent ad mortem, ſunt Deodanda. All things which cauſe death are Deodands. 79.

Omne teſtamentum morte conſummatum eſt. The death of the Deviſor compleats the Will. ib.

Omne majus continet in se minus. Every more containeth in it self a lesse. ib.

Omnia quæ sunt uxoris, sunt ipsius viri. That which is the Wive's, is the Husband's. 80.

Omnis ratihabitio æquiparatur mandato. Every approve is equivalent to a command. 81.

Oportet ut res certa deducatur in judicium. It behoveth, that a thing certain should be brought into judgment. ib.

P

Pater est quem nuptiæ demonstrant. Marriage proves the father. 82.

Pendente lite nihil innovetur. Writ hanging, nothing must be innovated. ib.

Perspicuè vera non sunt probanda. Clear truths are not to be proved. 83.

Plus peccat author, quam actor. The author is more guilty than the instrument. 84.

Possessio fratris de fœdo simplici, facit sororem esse hæredem. The possession of the brother of a fee-simple, maketh the sister to be heir. ib.

Propinquior excludit propinquum. The nearer akin excludes the more remote. 85.

Proximus sum egomet mihi. I love my self best. ib.

Q

Quando lex aliquid concedit, concedere videtur & id, sine qua res esse non potest. When the Law granteth any thing, it granteth that, without which, the matter could not be. 86.

Quando aliquid fieri prohibetur ex directo, prohibetur & per obliquum. A direct prohibition includes an oblique one. ib.

Quando jus Domini Regis & subditi concurrunt, jus Regis præferri debet. When the right of the King and Subject stands in competition, the King's is preferr'd. 87.

Qua-

Quælibet hæreditas naturaliter descendit. Every inheritance does naturally descend. ib.

Quæ in partes dividi nequeunt, solida à singulis præstentur. Things entire, must be entirely paid of severall. 88.

Quælibet concessio fortissimè contra donatorem interpretanda est. Every Grant is to be taken most strongly against the Grantor. ib.

Qui non habet in ære, luat in corpore. Either the purse paies, or the body suffers. 89.

Qui ex damnato coitu oriuntur, inter liberos non computentur. Bastards are not accounted amongst sons. ib.

Qui hæret in litera, hæret in cortice. He that sticks in the letter, sticks in the out-side. ib.

Qui adimit medium, dirimit finem. He that takes away the means, takes away the end. 90.

Qui peccat ebrius, luat sobrius. He that

that offends when he is drunk, shall suffer when he is sober. 91.

Qui per alium facit, per seipsum facere videtur. He that doth by another, doth by himself. 91.

Qui semel actionem renuntiavit, amplius repetere non potest. A retraxit bars all actions.. ib.

Qui sentit commodum, sentire debet & onus. He that beareth the burden, ought to receive the profit. 92

Quod ab initio non valet, tractu temporis non convalescet. That which is invalid in the beginning, tract of time will not make good. ib.

Quod prius est tempore, potius est jure, Prioritie in time prevails in Law. 93.

Quod semel meum est, amplius meum esse non potest. That which is once mine cannot be twice mine. 94.

Quod semel placuit in electionibus, amplius displicere non potest. That which is preferred by election, cannot be altered. 95.

Quo-

Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est. Where there is no ambiguity in the words, there expres's meaning shall be taken. 96.

Quod constat clarè, non debet verificari. Of that which is clear, no need of any averment. 97.

R

Refert, à quo fiat perquisitum. It matters from whom the purchase comes. 98.

Remoto impedimento, emergit actio. The impediment being removed, the action doth arise. ib.

Repellitur à Sacramento infamis. A scandalous person is barr'd of his oath. 99.

Res inter alios acta alteri nocere non debet. A thing acted amongst some, ought not to prejudice others. ib.

S

Sensus verborum ex causa dicendi accipiendus est. The sense of the words is to be taken from the occa-

sion

sion of the speech. 100.

Semper præsumitur pro legitimatione puerorum. Legitimation is alwaies presumed. 101.

Si mulier nobilis nupserit ignobili, desinit esse nobilis. If a Noblewoman by marriage, marries under the degrees of Nobility, she loseth her Nobility. ib.

Solus Deus facere potest hæredem. God alone can make an heir. ib.

Stabitur præsumptioni donec probetur in contrarium. The presumption is good, till the contrary be proved. 102.

T

Testamento cùm duo inter se pugnantia reperiuntur, ultimum ratum est. The last Devise taketh place. ib.

Traditio loqui facit chartam. Délivery makes the Deed valid. 103.

U

Vana est potentia, quæ nunquam venit in actum. That power is frustraneous, which is never produced into act. ib.

Ubi

Ubi non est principalis, ibi non potest esse accessarius. Where there is no principal, there can be no accessary. 104.

Ubi eadem ratio, ibi idem jus. The same Reason, the same Law. 105.

Ubi nullum matrimonium, ibi nulla dos. No marriage, no dower. 106.

Verba accipienda sunt in mitiori sensu. Words are to be taken in a favourable sense. 107.

Verba sunt accipienda cum effectu. Words are to be taken with the effect. ib.

Verba æquivoca intelliguntur digniore sensu. Doubtfull words are to be taken in the more worthy sense. 108.

Verba relata hoc maxime operantur, per referentiam, ut in esse videantur. Relative words do especially work this by reference, as they may seem in beeing. 109.

Verba chartarum fortius accipiuntur contra proferentem. The words of

of a Deed are most strongly taken against the Grantor. ib.

Vnumquodque dissolvitur eo ligamine quo ligatur. Every thing is dissolved by the same it obliges, ib.

Vltima voluntas testatoris perimplenda est, secundum veram intentionem. The Will of the Testator is exactly to be performed. 110.

Voluntas testatoris ambulatoria est usque ad mortem. The last Will onely stands. 111.

Volenti non fit injuria. To him that is willing, there is no injury done. ib.

Vtile per inutile non vitiatur. That which is profitable, is not destroyed by that which is frustraneous. 112.

Vxor non est sui juris, sed sub potestate viri. The wife has not her own swing, but is under the power of her husband, ib.

Law-

Law-Principles Reduc't to Practice.

A.

Accessorium non ducit sed sequitur suum Principale. As if a man letteth Lands for life rendring certain rent, if he grant in Reversion to another, and the Tenant attorn, all the Rent and Service passe by this word *Reversion*; because the Rent in such case, is incident to the Reversion. But albeit he

10 H. 7. 10. Coke l. 5. 21. Ployd. 235. a. grantech the Rent to another, the Reversion doth not passe, by such grant. *Litt.* 152. *a.* 33. *H.* 6. 33.

Lit. 186, a *A communi observantiâ non est recedendum.* A common opinion is good authority in Law. *Coke.*

Lit. 53. b. Dy. 114. *Actio personalis, moritur cum personâ.* If Lessee for years doth waste, and dieth; a Writ of waste lieth not against his Executor or Administrator, for waste done in his life-time.

Coke l. 1. 98. *a.* Coke Lib 148. Coke l. 8. 72, 63, *a.* l. 5. 86. *Actus Dei nemini facit injuriam.* As, If a Lessee covenant to leav the wood in as good a plight as it was at the time of the Lease, and after, the trees are subverted by tempests, he

he is discharged of the Covenant.

Actus Legis, nulli facit injuriam. If Land, out of which Rent-charge is granted, be recovered by an elder Title, and thereby the Rent-charge is avoided; yet the Grantee shall have a Writ of Annuity, for that the Rent-charge is avoided by the course of Law. *Coke Lit.* 148. a. 178. a. *Coke l.* 5. 87. *Dy.* 60.

Actus non facit reum, nisi mens sit rea. And therefore, in criminall Causes, as Felony, the Act and Wrong of a mad-man shall not be imputed to him. *Lit. Cont.* 247. b. *Doct. & Stud.* 148.

Actus repugnans non Coke l. 1.

Corbet's Case. Dy. 153. 21.E.436 4.E.4 29.

potest in esse produci. Ployd. 355. *a.* As if a Gift in Tail, upon condition, that if the Donee aliene, that then it shall remain to another, it is repugnant; for, after alienation, it cannot remain. An Obligation, *solvendum nunquam*, the *Solvendum* is void for the the contrarietie, and the thing presently due.

Lit. Com. 253. *b.* 14. Ass. pl. 20,21. E. 4. 28. Coke l. 2. 9. Ployd. 18. *a.*

Actus me invito factus, non est meus. As, when one is compelled for fear of Imprisonment, to make a Bond, or other Deed; such fear sufficeth to avoid the same.

Coke l. 4. 70. Lit. Com. 233. *b.*

Actori incumbit onus probandi. Bargainor and Bargainee; if the Bargainor intend to avoid the

the Bargain, by reason of non-inrolement within six months; he must make manifest proof thereof, or else it will be presumed, that it was inrolled.

Additio probat minoritatem. When it is said any where, that a man is seized in Fee, it shall be intended Fee-simple, and not Fee-tail; unless there be added to it this addition, Fee-tail. Lit. Com: 139. a.

Ad proximum antecedens, fiat relatio. If a man let Land to *A.* for life, the remainder to *B.* in Tail, the remainder to *C. in formâ prædictâ*; this remainder is void, for the uncertainty. But if the remainder had been to *C. in eadem formâ*, this had Litt. Com 20. *b.* Dy. 14. *b.* 46. *b.* Coke. l 2. 71. *Cromwel's* Case.

been a good Estate Tail; for, *Idem, semper proximo antecedenti refertur.*

Litt. Com. 154. b. *Ad quæstionem facti, non respondent Judices. Ad quæstionem Juris, non respondent Juratores.* The most usuall triall of matters of Fact, is, by twelve men. And matters in Law, the Judges ought to decide.

11 H. 4. 12 *Æstimatio prætériti delicti post factum nunquam crescit.* If the Gaoler let the Percussor voluntarily to go at liberty; and, after, the party wounded, dyeth; yet it is no felonious Escape.

Litt. Com 49. b. *Affectio nomen imponit operi.* If it be agreed between the Disseisor and Disseised,

Disseised, that the Disseised shall release all his right to the Disseisor upon the Land; and accordingly the Disseised entreth into the Land, and delivereth the Release to the Disseisor upon the Land, This is a good Release; and the Entry of the Disseizee being to this purpose, shall not avoid the Disseizin; for his intent in this case did guide his Entry to a speciall purpose. Lloyd 86. 141. 23 H. 6. 15. 1 E. 4. 11. 4 E. 4. 23.

Affectus punitur, licèt non sequatur effectus. To give mony to one returned on the Jury, though he be not sworn, is Maintenance. 34 H. 6. 26, 27. Aff. pl. 44. 19. R. 2. Breife 726.

Affirmativum negativum implicat. As *W.* 2. 56. Coke 1. 9.

Weſtm. 2. c. 3, 4. Ployd. 206. b. c. 11. That upon account before Auditors, and Arrerages, they have power to ſend their Bodies to the next Gaol of the Lord the King, in thoſe parts. Hence it is, that it is held, 27 *H.* 6. 8. That the Auditor ought to commit him to the next Gaol, though in another County.

22 Aſſ. pl. 82. Coke l. 5. 80. a. *Agentes & conſentientes pari pœnâ plectuntur.* *A.* maimeth *B.* by the conſent of *C.* An Appeal lyeth againſt *A* and *C*, and damages equally againſt both.

Litt. Com 141. a. Coke l. 8. 118. Dy. 65. 12 H. 8. 1. *Aliquis non poteſt eſſe Judex, in propriâ cauſa.* If one will preſcribe, that if any Cattle were upon the Demeans of the Manor, doing Damage; that

that the Lord of the Manor, for the time being, hath uſed to Diſtreyn them, and the Diſtreſs to retain, till Fine made to him for the Damages, at his will, This preſcription is void; for ſo he ſhould be his own Judge.

Apices Juris non ſunt Jura. The Law of *England* reſpecteth the effect and ſubſtance of the Matter, and not every Nicety of form or Circumſtance. Litt. Com 283. *b.* 304. *b.* Coke l. 4. 45. *b.*

Ambiguum placitum interpretari debet contra proferentem. The Plea of every man ſhall be conſtrued ſtrongly againſt him that pleadeth it; for every man is preſumed, to make the beſt of his own caſe. Litt. Com. 303. *b.*

B

Litt. Com 183. b. 112. b. Coke l. 3. 25. Ployd. 197. b. 213. a.

Benigna sunt faciendæ interpretationes Chartarum, propter ignorantiam laicorum, ut res magis valeat quam pereat. As, if Lands be given to two men, and to the Heirs of their two bodies begotten; the Donors have a joynt-estate for term of their lives, and yet they have severall inheritances, insomuch as they cannot, by any possibility, have an heir between them ingendred. The Law will, that their Estate and Inheritance be such, as is reasonable, according to the form and ef-

effect of the words of the Gift; and this is to the heirs which the one shall beget of his body, by any of his wives; and so of the other.

Benignior sensus in verbis generalibus seu dubiis est præferendus. As, if one charge another, that he hath forsworn himself; it is not Actionable, because it shall be intended, to be forsworn in usuall communication. *Coke l.* 4. 15. Coke l. 4. fol. 15.

C

Causa & origo est materia negotii. If a Servant have an intent to kill his Master; and, before execution. Coke l. 1. *Shelley's* case. Dy. 166. b.

cution of his intent, departeth out of his service, and afterwards kills him: it is petty Treason.

Litt. 102. a. *Caveat emptor.* If I sell another man's Horse, and he take him out of the Vendee's possession; yet I shall have an action of debt for the mony.

Ployd. 84. a. 3. E. 4. 21. *Certa debet esse intentio & narratio.* Debt, by one retained in Husbandry, against a Prioresse for his Salary; and declares, that he was retain'd with her Predecessor, and doth not shew by what person; it shall abate.

Coke l. 6. 13a Burton's case. *Cessante causa cessat effectus.* If the Lord marry the Heir female within the two years, which he hath to tender her Marriage,

riage, her Husband and she shall presently Enter. *Litt.* 78. b.

Charta non est nisi vestimentum donationis. And therefore if the intent be performed, though not the words of the Deed, it sufficeth. Ployd. 291. 2. H. 6. 10.

Communis error facit jus. As, an Acquittance by the Mayor alone, where there are many Presidents for it, is good. Doct. & Stud. 46. Ployd. 2. *Manxel's* case.

Consensus, non concubitus, facit Matrimonium. As, in *Ambrosia Gorges's* case: she married *Francis Gorge*, which *Francis* died when *Ambrosia* was of ten years of age. It was resolved, that the Queen, notwithstanding the said marriage, should have Coke l. 5. fol. 22. Litt. 33. a.

the

the Wardship of the said *Ambrosius*: For, it was not a compleat Marriage, because to every Marriage there ought to be a Consent; and, *Consentire non possunt, ante annos nubiles.*

Coke l. 8. 90. b. Dy. 45. p. 8 7 E. 4. 13. *Conditio Beneficialis quæ statum construit, benignè, secundum verborum intentionem, est interpretanda; Odiosa tamen, quæ statum destruit, strictè secundum verborum proprietatem, est accipienda.* A Lease to one upon condition, that the Lessee shall not alien to *A B.* and he alien to *R B.* the Condition is not broken; for every Condition must be taken strictly.

Consensus tollit errorem.

rem. If a *Venire facias* be awarded to the Coroners, where it ought to be to the Sheriff; or the *Vifne* come out of a wrong place; yet, if it be *per assensum partium*, and so entred of Record; it shall stand. Litt. 37. a. 126. a. Coke l. 5. fol. 40.

Consuetudo debet esse certa. In Trespasse for Trees carried away, the Defendant pleaded a Custom, that that Tenant of the Mannor, that first came to the place where, &c. shall have the Windfalls there: Void, for the uncertainty. 13 E. 2. *Fitz. Dum fuit infra ætatem*, 3.

Constructio Juris nemini facit injuriam. It is a Rule, that whensoever the words of a Deed, or of the Parties without Deed, Litt. 18. 3. *a. b.* Coke l. 3. 74. Ployd. 77. *a.*

shall

shall have a double intendment, and the one standeth with Law and Right, and the other not; that that standeth with Law shall be taken.

Litt. 114. b *Consuetudo semel reprobata, non potest amplius introduci.* As, if a Copy-hold be Leased of the Lord of the Mannor, for Life, or Years, according to the course of the Common Law, it shall never be after demised by custom, as a Copy-hold. For, as continuance maketh a custom, so discontinuance destroyeth it. But a Title gained by prescription, cannot be lost by interruption of Possession, but by interruption in the Right.

Con-

Consuetudo tollit communem legem. By the custom of *Gavelkind*, the Wife shall be endowed of the Moity, so long as she keeps her self sole, and without child; which she cannot wave, and take her Thirds for her life. Litt. 33. b. 158. b. Coke l. 4. 21. Ployd. 36. b. vid. *Statut. de consuetud. Kancia.*

Contraria allegans non est audiendus. As, in pleading Guilty to the breaking of the House, and Not-guilty to the Walls, in Trespasse, *de domo fractâ & muris ejusdem domi*; It is not good. 21 H. 7. 21

Cui licet quod majus, non debet quod minus est non licere. Where Copyhold Lands may, by custom of the Mannor, be granted to any one in Fee- Coke l. 4. 23. a. l. 9. 48. b.

Fee-simple; there, a Grant to one, and the heirs of his body, is within the Custom.

Ployd. 304. a. 11 H. 4. 23. 33 H. 6. 55. 12 H. 4. 16. *Cuique naturale est, id quod procreavit tueri.* And therefore is given to the Father, the education and custody of his Son; and, if any take him from him, he shall have a Writ, *Quare filium & haeredem suum rapuit.*

Lit 125. a. Coke l. 4. 29. a. l. 7. 19. a *Cuilibet, in arte suâ perito, est credendum.* In Sentence given in Causes in the Spirituall Court, the Judges of the Common Law, though it be against the Reason of the Law, shall give faith and credence to their Proceedings.

Cujus est dare, ejus est dis-

disponere. That a *Proviso* make a Condition, three things are required: First, That the *Proviso* do not depend upon another Sentence, nor participate thereof; but stand originally of it self. Secondly, That the *Proviso* be the word of the Bargainor, Feoffor, Donor &c. Thirdly, That it be compulsory to enforce the Bargainee, Feoffee, Donee, Lessee, &c. to do an act. and where these concurr, it is a Condition, in what place soever it be placed. For, *Cujus est dare, ejus est disponere.* Coke l. 1. a. fol. 70. *Cromwels* case.

D

Debile fundamentum fallit Coke l. 6. 14. a.

20 Aſſ. pl. 7. 49. E. 3. 8. 3 E. 3. 74. *lit opus.* When an Eſtate, to which a Warranty is annexed, is defeated; the Warranty alſo is defeated.

28 Aſſ. pl. 4. *Derivativa poteſtas, non poteſt eſſe major primitivâ.* The Bayliff of a Diſſeiſor ſhall not ſay, that the Plaintiff ever had any thing in the Land; for the Maſter himſelf ſhall not have that plea, becauſe he is not Tenant of the Freehold.

Deſtinata tantùm, pro factis non habentur. As if I ſquare a Tree to make a Beam of a Houſe, and die before it be laid in the building; it ſhall go to the Executors.

F. N. B. f. 21. *De fide & officio Judicis non recipitur quæſtio, ſed de*

de scientia, sive error sit Juris, sive Facti. As, If I assigne for Error, that whereas the Verdict passed for me, the Court received it contrary, and so gave Judgment against me; This shall not be received. 3 H. 6. 3. 8 H. 6. 23. 5 E. 4. 3. F.N.B. 23

Dies Dominicus, non est Juridicus. A *Scire Facias* out of the Common-Bench, error assigned, because the Test of it was upon a *Sunday*; and adjudged Error, because no Law-day. Dy. 168.

Divinatio non interpretatio est, quæ omnino recedit à litera. As, If I have a Fee-farm Rent of 10 s. issuing out of White-Acre; and, reciting the same Reservation, grant Litt.

to

to *J. S.* a Rent of 5 s. to be received out of the aforesaid Rent, and out of all my Lands and Tenements in Dale, with clause of Distresse; it is void, because it is against the words; and the copulation of the words shew, the taking of them in another sense.

Ployd. 75. b. F.N.B. 178 W. 2. c. 25. Ployd. 98. a. 90. a. 8 H. 7. 8.

Dilationes sunt in lege odiosæ. Though Warranties are favoured in Law, yet none shall vouch any one in Assize, if he be not present. And Dilatory Pleas must be good to every common intent.

Ployd. Ryder's case. 19 H. 6. 62. Dy. 221. pl. 18 90. pl. 8.

Dispositio de interesse futuro, est inutilis. If I devise the Mannor of *D.* by speciall name, of which, at that time, I am not seized;

zed; and, after, I purchase it; if I make not some new publication of my Will, my Devise is void.

Dominus non maritabit minorem in custodia sua, nisi semel. If the Guardian, in Chivalry, marry the Ward within the age of 14 years; and if afterwards, at the age of 14 years, he disagree to the marriage, the Guardian shall not make tender of a second marriage. Litt. Com 79. b.

Dormit aliquando jus, moritur nunquam. For, of such an high estimation is Right, in the eye of the Law, as the Law preserveth it from death and destruction: When it is said, that a Release of Right doth, in some cases, Litt. Com 279. b.

ſes, enure by way of extinguiſhment; it is to be underſtood, in reſpect of him that makes the Releaſe.

Litt. Com. 31. a. F. N. B. 150. *Doti mulieris parcatur, quia præmium pudoris eſt.* Tenant in Dower ſhall not be diſtreined for the debt due to the King, by the Husband in his life-time, in the Lands which ſhe had in Dower.

Litt. Com 31. a. *Dos de dote peti non debet.* The Father dieth, and the Wife of the Grandfather is endowed of one Acre, and dieth. The Wife of the Father ſhall be endowed onely of the two Acres reſidue.

Coke l. 3. 81. l. b. 72 Burrel's caſe. *Dona clandeſtina ſemper ſunt ſuſpicioſa.* The Aſſignment of the Leaſe was taken

taken to be fraudulent; becauſe, deliver'd in a ſecret manner, to a perſon of mean quality.

E

Eccleſia fungitur vice minoris; meliorem poteſt facere conditionem, deteriorem nequaquam. A perſon may have an action of waſte, and it ſhall be ſaid, *ad exhæredationem eccleſiæ.* So if he make a leaſe for Life, he ſhall have a *Conſimili caſu*, during the life of the Leſſee; But a perſon cannot make a diſcontinuance; but if he do and dye, his ſucceſſor may enter, notwithſtanding the diſcontinuance. Litt. Com 141. a. 103. a.

Litt. Com 161. a. Hob. 266. 1. Dy. 285. Pl. 37.

Executio juris nulli facit injuriam. Therefore, a man shall not be punished for suing of Writs in the Kings Court, be it of right or wrong.

Litt. Com. 205. a. 30. Ass. pl. 8. 17. E. 3. 7. Coke l. 4. 73.

Expressio eorum quæ tacitè insunt, nihil operatur. As, if a man seized of Land, letteth the same by Deed indented, for years, rendring a certain rent, with clause of distresse; this clause is vain, for the Lessor may distrain of Common right for the rent behind.

Litt. Com 47. b.

Ex nudo pacto non oritur actio. And therefore, in an action of debt for rent, it is a good plea for the Lessee to say, that the Lessor had nothing in the Tenement, at the time of

of the Leaſe.

Expreſſum facit ceſſare tacitum. As if the Condition upon a morgage be to pay to the Mortgagee or his heirs, the money, &c. and before the day of payment, the Morgagee dieth, the Feffor cannot pay the money to the Executors of the Morgagee. Litt. Com. 210. a. Coke Rep. *Altham's* caſe. *Bedel's* caſe.

Extra juriſdictionem jus dicenti, non paretur impune. When the proceedings are *coram non judice*, an action lies againſt them that Execute the proceſſe. 22. E. 4. 33. Dy. 60. Pl. 26. 14. H. 8. 16.

Exteriora acta indicant interiora animi ſecreta. When Licenſe is given to any one by the Law, and he doth amiſſe, he Litt. Com 100. a. Coke I. 8. 146. I. 9. 59.

shall be a trespasser from the beginning.

Litt.Com. 47 a. Ployd. 361. a. *Ex verbo generali aliquid excipitur.* An exception is part of the thing granted, and in *esse*, (as *exceptis, salvo, prater,*) and out of a generall a part may be excepted.

F

40. Ass. Pl. 25. *Facimus quos inquinat, equat.* A servant procureth another to kill his Master; this is not petty Treason in the servant, because but felony in the other.

Nov. Int. 285. b. Heb. 133. Litt. 304. *Festinatio Justicia noverca infortunii.* And therefore, the judges alwayes in cases of Demurrers, have a time to consider of the

the matter in doubt, by a *Curia advisare vult*. And when judgement is given it is, *Et super hoc visis præmissis, & per Justiciarios hic plenius intellectis*, (and then, *Ideò consideratum est*.) As in the judgement between the King and the Prior of *Worcester*, concerning an Appropriation. *Et examinatis, & intellectis, recordo et processu coram toto Concilio, &c.*

Finis rei attendendas. The end and fruit of a Suit, is satisfaction: but execution of the body is no satisfaction, but a gage for the debt. And therefore, after his death he shall resort to another execution. Coke l. 5. 87. 14 H. 7, 8. 33 H. 6. 47.

Litt. Com 126. a. *Filiatio non potest probari.* A man leaveth his wife enseint with a child: Issue shall not be taken that she was not enseint by her Husband on the day of his Death; for, *Filiatio non potest probari.*

Litt. Com 224 a. Coke l. 10. 67. b. 37 H. 6. 16. Dy. 281. Doct. & stud. l. 2. c. 4. *Firmior est operatio legis quàm dispositio hominis.* A Lease upon condition, that if the Lessee make any waste, a re-entrie; if a stranger doth wast, he may re-enter: Yet, if the Tenant had been bound in an Obligation, that he shall do no wast, he shall not forfeit his Bond by the wast of a stranger.

Coke l. 6. 167. a. Ployd. 191. b. 9 H. 7. 24. *Frustra fit per plura, quod fieri potest per pauciora.* If the King by his Patent,

Patent, reciting the eſtate taile, grant the reverſion, and further grant the Lands in poſſeſſion, thoſe ſeverall Grants in one patent are as ſtrong in Law as if the King by one patent had recited the eſtate taile, and granted the reverſion, and by another patent the Lands in poſſeſſion.

Furioſus furore ſ. o puniturr. And therefore, if a Mad-man commit Felony, he ſhall not dye for it: for though, he hath broken the words of the Law, yet he hath not broken the Law. Litt. Com. 247. *b.*, Ployd. 19. *a.* Litt. 124. *b.*

G.

Coke l. 2. fol. 33. Dodding-ton. lib. 8. 98. a. Bolpoles caſe.

Generale, nil certum implicat. If a man be bound to be Non ſuited in all actions that he hath againſt another in the common Bench, he may ſay that he hath no action therein: otherwiſe, If the condition be particular, *viz.* that he ſhall be non-ſuited in a *Formedon*. So in arbitrement when the ſubmiſſion is generall, an award of one cauſe, though there were more between them, is good.

Ployd. 467. b. 68. a.

Generalibus ſemper ſpecialia inſunt. As the Stat. of *Glouceſter* giveth an action of waſt againſt him which holdeth for years, which

which is in the plurall number, yet it may be taken for him that holdeth for a year, or halfe a year.

Generalis clauſula ad expreſſa non refertur. An Aſſignee of a leaſe, ſhall have a writ of covenant upon the words, Demiſe and Graunt: yet if there be an expreſſe covenant that the leſſee ſhall enjoy it without eviction of the leſſor, or any claming under him, this expreſſe covenant qualifieth the generality of the covenant in Law, and reſtraineth it by mutuall conſent of both parties, that it ſhall not extend to the Aſſignee. Coke l. 4. fol. 80. Noke's caſe.

Coke l. 4. 131. Dy. 56. 6. *Generalis clauſula non porrigitur ad ea, quæ antea ſunt ſpecialiter comprehenſa.* When a deed at firſt contains ſpeciall words, and then concludeth in words generall, both ſhall ſtand: As Lands given to one and the heires of his body, *habendum* to him and his heirs, he hath an eſtate taile and a fee ſimple expectant.

Fitz Nat. Brev. 2. d. *Generalia ſunt præponenda ſingularibus.* As in a Writ or Plaint, the generall ſhall be put in demand before the ſpeciall, as Meſſuage before Lands, Lands before Meadow, Meadow before Paſture, Paſture before Wood, Wood before Juncary, &c.

H.

H.

Hæres est pars antecessoris. And therefore if Lands be given to a man and his heirs, all his heirs are so totally in him as he may give the Lands to whom he will. Litt. Com 22. b. Coke I. 7. 12. 10 H. 7. 8. Dy. 868. Rep. 151.

Hæres legitimus, est quem nuptiæ demonstrant. One who is ingendred in a vowtrie during the coverture, is a Mulier by the temporall and common Law. Coke 1, 7. 44. a. Litt. 7. 6.

Hæres non tenetur ad debita antecessoris reddenda, nisi per antecessorem ad hoc fuerit obligatus; præterquam debita regis tantùm. If the heir be not named in the obligation, he Britton fol. 65. b. Litt. Com 209. a. 383. b.

he ſhall not be bound by the deed of his anceſtor except to the King.

Litt. Com 8. a. 1g. b. *Hermaphrodita tam maſculo quàm fœmina, comparatur ſecundum prævaleſcentiam ſexûs ſincaleſcentis.* An Hermaphrodite ſhall be heire either as male or female, according to that kind of the ſex which doth prevaile; and accordingly, it ought to be baptized.

I.

Lit. Com 45. b. 43. b. 96. a. Ployd. 273. b. Dy. 91. b. 42. d. *Id certum eſt, quod certum reddi poteſt.* Albeit, there appear no certainty of years in a leaſe, yet if by reference to a certainty it may be made certain, it ſufficeth. As a leaſe

leaſe to *A.* for ſo many yeares as *B.* ſhall name: when *B.* hath named the years, it is a good leaſe for ſo many. 11 H. 11. 7. 17.

Idem ſemper proximo antecedenti refertur. As if a man let Lands to *A.* for life, the remainder to *B.* in taile, the remainder to *C. in forma prædicta*, this remainder is void, for the incertainty: But if it had been the remainder to *C. in eadem forma*, this had been a good eſtate-taile. Litt. Com. 20. *b.*

Ignorantia juris non excuſat. If a ſtatute penall be made, and it is enacted that the ſtatute ſhal be proclaimed by ſuch a day, in every Shire; and it is not proclaimed before the Doct. & St. 2. c. 46. Coke. 1 1. fol. 177. *Mildmayes* Caſe.

the day: yet if any offend againſt this ſtatute, he ſhall not be excuſed for the not proclaiming of it; for he is bound to take notice of the Law at his perill.

Coke l. 2. fol. 3. b. Mauſer. Doct. & Stud. l. 2. c. 47. 31 E. 3. 3. *Ignorantia facti excuſat.* As if an illiterate man be bound to ſeal a Deed, he is not tyed to do it, if there be not ſome preſent to read it, if required; or, if it be read amiſſe, he may plead *non eſt factum.*

Coke Lit. 177. a. 2. a. 68. a. *Ignoratis terminis, ignoratur et ars.* Every art hath its *vocabula artis*, Which being not conceived, that art cannot be comprehended. Therfore the ſignifications of words in all arts, and ſciences

ences are neceſſary, which Mr. *Littleton*, and *Coke* upon him, ordinarily obſerve.

Impotentia excuſat legem. A man ſeized of an advowſon, or rent in fee, hath iſſue a daughter, who is married, and hath iſſue, and dies ſeized; the wife before the rent became due, or the Church became void, dieth; ſhe had but a ſeizin in Law, and yet he ſhall be tenant by the courteſie, becauſe he could by no induſtrie attaine to any other ſeizin.

Coke Litt. 29. a. 258. b. 263. b. Coke Rep. *Laughter's* caſe. Coke l. 1. 98.

Idem non poteſt eſſe agens & patiens. And therefore a man cannot preſent himſelfe to a Benefice. No man can ſummon

14 H. 8. 31. 13 H. 8. 32. 8 H. 6. 29. 9 E. 4. 33. Dyer. 188.

mon himſelf. And therefore if a Sheriff ſuffer a common recovery, it is error: becauſe, he cannot ſummon himſelf.

Coke Lit. 352. b. *Perſonalitas non concludit nec ligat.* And therfore every *Eſtoppell* ought to be a preciſe affirmation.

7 E. 3. 65. b. Coke l. 11. 57. a. *Imperitia, maxima eſt mechanicorum pœna.* Therfore if he that taketh upon him to work be unskilfull and ignorant, it is ſufficient puniſhment for him: for if any take upon him to worke and doth it amiſſe; an action of the caſe lyeth againſt him.

Lit. Com. 2. 10. a. Coke l. 11. 50. *Incluſio unius, eſt excluſio alterius.* A morgage with the money to be paid

paid to the Morgagee and his heirs, it shall not be paid to his Executors. Ployden. 106.

Infinitum in jure reprobatur. As if a man have a debt by a simple contract, and taketh an obligation for the same debt, or any part of it, the contract is determined; So of a judgment upon an obligation. Coke l. 6. 45. l. 7. 456. l. 8. 16. b. 3 H. 4. 17. 11. H. 4. 9. 9 E 4. 50, 51.

In fictione legis semper est æquitas. As if one seized in Fee, take Wife, and make a Feoffment in Fee, the Feoffee grants a rent-charge of 10l. to the Fœffor and his Wife, and the heirs of the Husband; the Husband dieth, the Wife recovereth the moity for her Dower by the Custom; the Rent shall Lit. Com. 150 a. Coke. l. 11 46. *Liford's* case.

shall be apportioned, and she may distrain for five Pound, which is the moity: for albeit the Dower by fiction of Law be above the Rent, yet when she recovereth Dower, she shall not have the entire Rent but of the residue: for fiction of Law shall never work a wrong to a Third Person.

9 H. 5. 15. Coke l. 4. 90. a. l. 2. 68. Perk. fol. 6. *In aquali jure, melior est conditio possidentis.* If a man purchase severall Lands at one time, which are holden of severall Lords by Knights service, and dieth, the Lord who first seizeth the Ward shall have him.

Litt. Com 127. a. 161. b. *Injuria illata in corpus non potest remitti. Vita & membra*

membra sunt in manu regis. 19 *Ed.* 1. *rotul.* 36. And therefore, if a Lord Mayheme his villain, the King shall punish him for maiming his Subjects by Fine, Ransome, and Imprisonment.

In ambiguis casibus semper præsumitur pro rege. And the reason that Treasure Trove belongs to the King, is, *Quia dominus rei non apparet; et ideo cujus sit incertum est,* and therefore presumed, it is the King's. 22. Ass. pl. 19. Stamf. fol. 10.

In disjunctivis, sufficit alterum esse verum. Bishop of *Sarum*'s case: Whereas the Avowant did avow that the Office *supravisoris omnium maneriorum suorum*, to such Person Coke 1. 10. 59. a.

Person or Persons as it pleased the Bishop, and the defendant pleaded in the negative, that the Office had not been but for the life of one; that exception was not allowed, because he did not say, that the said Office had been granted to divers, but onely to such Person or Persons; and in disjunctives, it is sufficient that one of them be true.

2 H. 4. 3
26 H. 8. 2. *In jure, non remota sed proxima causa spectatur.* If a Person make a lease and be deprived, or resigneth, the successors shall avoid the lease, for the Law regardeth not the cause of Deprivation, or Resignation, which is the

the Act of the party, but the act of the Ordinary in the admission of the new Incumbent.

In maleficiis plerumque spectatur exitus, non voluntas. If I hurt another onely with an intention to beat him, and he dieth, it is Felony. So the ancient Law is altered, wherein it was a Rule of Law, *In maleficiis spectatur voluntas, & non exitus*, as *Bracton* hath it, *vid.* 1 *E.* 3. 1. H. 3. 144. Coke. l. 2. 84.

In omnibus ferè, minori ætati succurritur. In a *cessavit* against an infant, who hath the Tenancy by discent, he shall have his age, though it be upon his owne Cesser, because he cannot tell what arrearages

arrearages to tender before the Judgment.

Pop. Rep. 58. *Impossibile est unum corpus in duobus locis esse simul.* As if a man make a lease of two Barns, rendring Rent, and for default of payment a re-entry. If the Tenant be at one of the Barns to pay the Rent, and the Lessor at the other to demand the Rent, and there is no body there to pay it, yet the Lessor cannot enter, for the condition broken; because there was no default of the Tenant, he being at one Barn; for it is not possible for him to be in two places together.

Ployd: 498. a. *In præsentia majoris cessat potentia minoris.* Appropiations

propiations made by the Pope, Patron, and King, were good before *Stat.* 25. *H.* 8. without the Biſhop; becauſe in the power of the greater, the leſſer ceaſeth, the Pope being ſupream Ordinary.

In quo quis deliquit, in eo de jure puniendus eſt. If the Keeper of the Park pull down the Lodge or any Houſe with in the Parke, for putting of Hay into it, for feeding of the Deere, or ſuch like; it is a Forfeiture, and the reaſon, why the Office is Forfeited, is, that he may be puniſhed in that wherein he offended. Coke Litt. 233. *b.* Croke Rep. fol. 183. Litt. 233. *b.*

In omnibus obligationibus quibus dies non ponitur, præſenti 20 E. 4. 8. 21 E. 4, 8.

præsenti die debetur. Et nulla temporis designatio, præsens denotat. When one is bound in Twenty Pounds, to pay Ten Pound, and no day of payment is limited, the lesser summe is due presently to be rendred.

Dy. fol. 12. pl. 50. Ployd. 83. 6, 7. H. 4. 31. *Judicis est judicare secundum allegata & probata.* In a *Formedon*, if the demandant Count upon a Fœffment in Fee, and not in Taile, if the Tenant demurre upon it, the Court cannot maintaine the Declaration to be true, because the Judge is to judge acccording to what is alledged.

Judicium pro veritate accipitur. And therefore, common

common recoveries suffered by the Tenant in Fee of the Lands of his Lessee for Life, could not be avoided or falsified till the *Stat.* 14. Eliz. c. 8. And in Attaint, the first Judgment is so favoured, that the Plaintiffe shall have no other evidence but what he had at the first Triall; but the Jury, as many as they will, to confirme the first Verdict.

Judicium à non suo judice datum, nullius est momenti. As if the Sheriff, who is prohibited by the Law to hold his Turn within a Moneth after *Michaelmas*, holdeth his Turn after the Moneth, & take an Indictement of Coke. l. 10. 76. b.

Robbery at that Turn, and the Inditement is removed by *Certiorari* into the King's Bench; by advice of all the Justices, the party was discharged, because not within the time limited.

Coke Litt. 33. a. *Junior non potest dotem promereri, nec obstabit mulieri minor ætas viri.* If the Woman be not of the age of nine years, she shall not have Dower: but if she be of that age, it matters not what age the Husband be of, though but four or five.

Coke l. 7. 15. b. Bracton, l. 9. c. 23. 33 H. 6. 55 *Jura naturalia sunt immutabilia.* As if a man have a Ward by reason of a Seigniory, and is outLawed, he forfeiteth his Wardship to the King: but

but if he have the Wardship of his Son or Daughter which is heir apparent, and is out-Lawed, he doth not Forfeit this Wardship; for Nature hath annexed it to the person of the Father.

Ipsæ etenim leges cupiunt ut jure regantur. If partition be made between partners of Land in Fee simple, and for owelty of partition, one granteth a Rent to the other generally, the grantee shall have a Fee simple without the word [heirs] becaus the grantor hath a Fee simple, in consideration whereof he granted the Rent. Litt. Com 10. a. 271. a. Coke l. 5. 100.

Jura publica anteferenda privatis; &, jura publica Litt. Com 130. a.

Mirror. c. 3. Sect. Britton. 281. *ex privatis promiscuè decidi non debent.* And therefore in protection either for being in the Kings service, as the King's Souldier, or of his Councell as the King's Ambassadour, *pro negotiis regni*, both these being for the publick good of the realm private mens actions, and suit must be suspended for a convenient time.

Litt. com. 185. a. 453.3.13. *Jus accrescendi præfertur oneribus.* As if one joyn-tenant grant a common of pasture, or of Turbary, Estovers, or Corody, &c. out of his part; or a way over the Land; this shall not bind the survivour.

Lit. Com 185. b. *Jus accrescendi præfertur ultimæ voluntati.* If

two

two joyn-tenants be of Land in fee simple, and one of them Deviseth that which to him belongeth by his testament, and dyeth, this devise is void, because the survivour claimeth by the first Feoffor.

Jus descendit & non terra. As when an estate is turned to a right by disseizin, discontinuance &c. but in case of a title, the Land descends. Lit. Com. 345. a. b.

Justum non est, aliquem ante matrimonium natum, mortuum, facere bastardum, qui toto tempore suo pro legitimo habebatur. If bastard Eigne after the fathers death enter into the land, and occupie it during his life without interruption Coke. l. 8. 101. 14 E. 2. bastard. 26. Doc. & Stud.

of the mulier puisne, and dye seized, the mulier is barred for ever.

L.

Litt. Com 97. b. *Lex est summa ratio.* The common Law, is nothing else but Reason; which is to be understood of an artificiall perfection of reason gotten by long study, observation, and experience, and not of every mans naturall reason, for *nemo nascitur artifex.* This legall reason is *ratio summa.* And therefore if all the reason that is dispersed into so many severall heads, were united into one, yet could he not make such a law as the Law of England

land is; because, by succession of many ages, it hath been refined by an infinite number of grave and learned men.

Licet Tenenti vetus opus reficere, non novum facere. 44 E. 3. 21. 44. 11 H. 4. 32.

A Tenant may cut down trees for the amendment of houses, or reparation of them. But if the necessity of a new house comes in Question, as to build a Stable; or, if no house be built upon the Land at the time of the lease, the Lessee may not cut down trees, to make a house.

Loquendum ut vulgus, Coke l. 4. 46. *a.* Ployd. 169. Coke l. 4. 64. *b.*

Words shall be taken according to the vulgar and ordinary construction as though a person attain-

 l. 7. 11.

ted be a perſon convict and more. And therefore it is the office of Judges to take and expound the words, which the common people uſe to expreſſe their intent by, according to their intent, and not according to the true definition.

Litt. Com. 126, 127. 79. a. 197. a. *Lex non præcipit inutilia.* A villain ſhall not by the Law have any appeal againſt his Lord, for in appeal of Mayhem a man ſhall recover but his dammages; and if the Villain in that caſe recover dammages againſt his Lord, and hath thereof execution, the Lord may take that the villaine hath in execution, from the villain, and ſo the Recovery void. *Lex*

Lex ſemper intendit quod convenit rationi. Guardian in Chivalry[a] ſhall have the cuſtody of the heirs, and his land untill he come to his full age of one and twenty yeats: becauſe, by intendment of Law the heir is not able to doe Knights ſervice before that age, which is grounded upon apparant reaſon. Litt. com. 78. b. 182. a.

Lex ſpectat naturæ ordinem. If tenant in ſocage hold of the Lord by Fealtie, and a roſe, the Lord ſhall have for his reliefe a Roſe, &c. or other flowers: the tenant dyeth in winter, the Lord cannot diſtrain for his relief, untill the time that roſes by courſe of the year Litt. com. 92. a. 97. Ployd. 540.

may have their growth.

Litt. Com. 231. b. *Lex non cogit ad impossibilia.* If a deed remain in one Court, it may be pleaded in another Court without shewing forth.

Litt. Com 124. b. 139. a. *Lex libertati dat favorem.* If a villain sue an action of trespas or any other action against his Lord, in one County; and the Lord saith, that he shall not be answered: because, he is his villain regardant to his Mannor in another County; and the Plaintiff saith, that he is free, and of a free estate, and not a villain, this shal be tryed in the County; where the Plaintiff hath conceived his action; and not in the County where

where the Mannor is, and this is in favour of Liberty.

Lex citius tolerare vult privatum damnum, quàm publicum malum. If there be Lord, Mesne, and Tenant; and the Tenant holdeth of the Mesne by service of five shillings; and the Mesne holdeth over by service of twelve pence: If the Lord *Paramont* purchase the Tenancie, in fee, then the service of the mesualty is extinct; because when the Lord *Paramont* hath the Tenancy, he holdeth of his Lord next *Paramont* to him; and if he should hold this of him which was Mesne, then he should hold the same tenancy Litt. Com 152. b.

tenancy immediately of divers Lords, by divers ſervices, which ſhould be inconvenient; and the Law will ſooner ſuffer a miſchief, than an inconvenience, and therefore the Seigniory of the meſualty is extinct.

Litt. com. 207. a. *Liberata pecunia non liberat offerentem.* If an obligation of one hundred pounds be made with condition for the payment of fifty pounds at a day, the Obligor tenders the mony, and the obligee refuſeth the ſame: yet in action of debt upon the Obligation, if the Defendant plead the tender and refuſall, he muſt alſo plead that he is yet ready to pay the mony, and

and tender the same in Court.

Linea recta semper præfertur transversali. For descents, it is a Maxime in Law, Lineall descent which is conveyed downward in a right line, (as from the Grandfather to the Father, from the Father to the Son,) shall inherit before the heire by collaterall descent, which is derived from the side of the lineall as Grandfather's brother, &c. Litt. com. 10. b.

M.

Mala Grammatica non vitiat chartam. As *Nec aliquid in eo specificatum non aliter se extendat, &c.* Here Litt. 146. b. Cok. l. 9. 48. 4 H. 6. 16.

Here is a double negative, *Nec & non*, which in Grammaticall construction amounteth to an affirmative; for *Negatio destruit negationem, & ambo faciunt affirmativum*; yet the Law that principally respecteth substance, doth judge the proviso to be a negative, according to the intent of the parties, and not according to the Grammaticall construction, to the end the proviso may take effect.

Litt. Com. 6. b. 41. a. 112. a.

Maritus & uxor animæ duæ sunt, in una carne. Therefore a wife cannot be produced either against or for her husband; for it might be a cause of implacable discord, and dissen-

diſſention, betwixt the Husband and Wife, and a mean of great inconvenience.

Malus uſus abolendus. If a man wil preſume that if any Cattell were upon the demeanes of the Mannor there doing damage, that, the Lord of the Mannor for the time being hath uſed to diſtrain them, and the diſtreſſe to retain till fine were made to him for the dammages at his wil; this preſcription is void, becauſe it is againſt reaſon. And the rule is, *In conſuetudinibus non diuturnitas temporis, ſed ſoliditas rationis eſt conſideranda.* Litt. Com. 141. a.

Maxime pacti contraria ſunt vis et injuria. And there- Litt. Com. 161. b.

therefore *Britton* saith well, speaking in the person of the King, *Nous volous que touts gens pluis useant judgement que force.* And therefore is it, that in Rent-service, Charge, and Seck; Foreſtallment, (which is an incountring or menacing the Lord in the way, that he dare not come on the land to diſtrain, or demand the rent,) is a diſſeizin. And in ſuch caſe claim of the Land, ſhall avoid a diſcent.

lb.254.a.

lb.337.b. *Meliorem conditionem facere poteſt minor, deteriorem nequaquam.* If the infant make a feoffment; he may enter either within age, or at full age; likewiſe after his death his heire

heir may enter.

Minor jurare non potest. And therefore he cannot be of an Inquest. An Infant cannot make his Law of *Non summons*; therefore the default shall not prejudice him. An Infant cannot, upon his Oath, make his Law in action of debt. 26 *E.* 3. 63. *Dy.* 7. 104. 11 *H.* 6. 40. 1 *H.* 7. 15. Litt. Com 172. *b.* Bracton. 5. l. fol. 340. *b.* 46 E. 3. 10. 9. 3. 424.

Modus & Conventio vincunt legem. To every Tenant for life, the Law, as incident to his Estate, without provision of the party, giveth him three kinds of Estovers; that is, Housebote, which is twofold, viz. *Estoverium ædificandi, & ardendi.* Ploughbote, that is, *Estoverium* Litt. Com 41. *b* 166. *a.* Bracton. l. 4. fol. 222. 21 H. 6. 46. 10 E. 4. 13

verium arandi. And lastly, Haybote, which is, *Estoverium claudendi.* And these Estovers must be reasonable. And these the Lessee may take upon the land demised, without any assignment; unlesse he be restrained by speciall Covenant: for an Agreement doth alter the Law.

Litt. Com. 6. b. Fleta. l. 2. c. 44. 23 E. 1. Villaine 36, 37. 29 E. 1. Ib. 32.

Mulieres ad probationem statûs hominis, admitti non debent. And therefore are women, by Law, wholly excluded, to prove a man to be a villain.

Litt. Com. 142. a.

Multa transeunt cum universalitate, quæ per se non transeunt. If a man hath a Rent-seck of the part of his mother, and the

the Tenant of the land grant a Diſtreſſe to him and his heirs, and the Grantee dieth; the Diſtreſſe ſhall go with the Rent to the heir of the part of the mother, as incident and appurtenant to the Rent: for now is the Rent-ſeck become a Rent-charge.

N

Negationi nihil implicat. If a Tenant wage his Law of *non ſum*; this doth not imply that he was Tenant. 11 H. 7. 23. 21 H. 6. 41. 10 E. 3. 10.

Nemo debet bis puniri pro uno delicto. In Appeal of *Mayhem*, the Defendant pleaded that before, &c. and the Plaintiff recovered Coke l. 4. fol. 43. *Hudſon's* caſe.

red in Treſpaſſe, for the ſame Battery and Wounding, 200l. and ſatisfaction acknowledged; and the Barre was adjudged good.

Lit. Com. 309. b. Coke. l. 5. fol. 111. *Mallarids* caſe. Peck. 15. Ployd. 432. b.

Nemo poteſt plus juris in alium transferre quam ipſe habet. If the Conuſee of a Fine, before any Attournment by Deed Indented and Inrolled, bargaineth and ſelleth the Signiory to another; the Bargainee ſhall not diſtrain, becauſe the Bargainor could not diſtrain.

Lit Com. 97. b.

Neminem oportet eſſe ſapientiorem legibus. The Law is the perfection of Reaſon. And if all the Reaſon that is diſperſed into ſo many ſeverall Heads, were united into one,

one, yet could he not make such a Law as the Law of *England* is; because by so many succession of Ages, it hath been refined by an infinite number of grave and learned men; so that it is *ratio summa.*

Nemo tenetur exponere se infortuniis & periculis. And therefore foreſtalment, with a menace of life and members, is a disseizin of rents-service, charge, and seck. Litt. Com 162. a. 49 E. 3. 14. 49. Ass 5. 29. Ass. 49.

Nemo punitur pro alieno delicto. A man cannot claim propertie by his Bailiff or Serjeant, in Replevin; and the reason is, for that if the claim fall out to be false, he shall be fined for his contempt; Litt. com. 145. b.

tempt; which the Lord Lord cannot be, unleſſe he make claim himſelf; for he ſhall not be puniſhed for his Bailiff's offence.

Ployd. 32.b. 39 H. 6. 22. *Nemo tenetur prodere ſeipſum.* As if a man grant to one an Annuity, *pro conſilio impendendo*, the Grantee ſhall have a Writ of Annuity, without ſhewing, that he hath given him counſell; for the ſhewing of it is not for his benefit; and deniall of counſell goeth in defeizance of the Annuity; which ought to be ſhewn by the Defendant, becauſe for his benefit.

Litt. Com 97. b. *Nihil quod eſt inconveniens vel contra rationem, eſt licitum.* Tenant in Frank-

Frank-marriage, shall do fealty to his Lord, before the fourth degree be past; for it should be inconvenient, and against reason, that a man shall be Tenant of an estate of inheritance to another, and the Lord should not have any manner of service; for, if he does not fealty, he shall not do any manner of services to his Lord.

Nihil de re accrescit ei, qui nihil in re quando jus accresceret habet. If two joynt-Tenants be of a Rent, and one of them disseize the Tenant of the Land; this is a severance of the Joynture for a time, for the moity of the Rent is suspended by unity

Litt. Com 188. a. Ployd. 419. Bracebridge's case.

unity of poſſeſſion, and therefore cannot ſtand in Joynture with the other moity in poſſeſſion. And here, if one of them die, there ſhall be no ſurvivour. For there ſhall never be any ſurvivour, unleſſe the thing be in joynture at the inſtant of the death of him that firſt dieth.

44 E. 3. fines. 37, 37 H. 6. 17. 7 E. 3. 50.

Non refert an quis aſſenſum præbeat verbis, an rebus & factis. If the Baron accept the grant of a Reverſion, that amounteth to an Attornment. 44 *E.* 3. 37. He which hath *intereſſe termini*, cannot, by expreſſe words, ſurrender it, but the acceptance of a new Leaſe ſhall drown it.

Non

Non valet impedimentum quod de jure non sortitur effectum; &, Quod contra legem fit, pro infecto habetur. If Copy hold Lands be forfeited, or escheat, and the Lord Lease them for years or life, or any other estate by Deed, or without Deed; this Land can never again be granted by Copy, for the Custom is destroyed. For, during these Estates, the Land was not demisable by Copy. But if the interruption be tortious, as by Disseizin and Discent, false Verdict, or erroneous Judgment; there it may be granted again by Copy. Coke. l. 4. 31. Frenches case. Litt. 361. b.

Non afficit conatus, nisi

Coke l. 6. 4. *Mildmay's* case. *sequatur effectus.* A gift in tail upon condition, that his Estate shall cease, if he go about to alien, &c. This condition is void; for, endeavour of a breach is not a breach.

Litt. Com 22.b. 217. a. *Non est hæres viventis.* If a man, by Deed, make a Lease for years, the remainder to the right heirs of *J. S.* and the Lessor make livery to the Lessee, *secundum formam Chartæ*; this Livery is void, because during the life of *J. S.* his right heir cannot take; and in that case, the Free-hold shall not remain in the Lessor, and expect the death of *J. S.* during the term. For, albeit *J. S.* dye during the term, yet the remainder is void, because a Livery of

of seizin cannot expect.

Non valet pactum de re mea non alienanda. As, a Feofment upon condition, that the Feoffee shall not alien; the Condition is void. Litt. Com 223. a.

Nullum iniquum in jure præsumendum. Records are so high and sacred, that they import in themselves inviolable veritie; which, if any gainsay, they shall be tryed onely by themselves, and not by the Country. And if averment against a Record should be permitted, then the effect and validity of the Record should be tryed by the Country, which is against the Rule of Law, *Nullum iniquum est in ju-* Coke l. 4. fol. 70. *Hynde's* case.

re præsumendum.

Litt. Com 118. a. 90. b. 119: a. Ployd. 156. 159. 9 H. 6. 21. 12 H. 7. 12

Nullum tempus occurrit Regi. For, if the villain of the King purchase any lands, and alien, before the King (upon an office found for him) doth enter; yet the King, after Office found, shall have the Land.

Litt. com. 43. b.

Nullum simile est idem. Tenant by Statute Merchant, Staple, or Elegit, are said to hold Land, *ut liberum tenementum*, untill their debt be paid: Yet in truth, they have not Freehold, but a Chattle, which shall go to the Executors; and the Executors, if ousted, shall have an Assize. But is *similitudinarie*, because they shall, by the Statutes,

tutes, have an Assize, as a Tenant of the Freehold shall have; and in that respect, hath similitude of a Freehold; but, No like is the same thing.

Nullus commodum capere potest de injuria sua propria. Lit. Com. 148. *b.* If *B.* make a Lease of one Acre for life to *A.* and *A.* is seized of another Acre in Fee; and *A* granteth a Rent-charge to *B.* out of both Acres, and doth waste in that Acre which he holdeth for life. *B* recovereth in waste. The whole Rent is not extinct, but shall be apportioned; and yet *B* claimeth one Acre under *A*. So, if *A* had aliened in Fee, and *B* had entred for the forfeiture.

O

Omnis privatio præsupponit habitum. A person maketh the Lease for years, reserving a Rent, and dieth; the Lease is determined by his death. Also in a reall Action, a Parson, Vicar, Archdeacon, Prebend, shall have aid of the Patron and Ordinary, as Tenant for life shall have. So that to many purposes, a person hath in effect but an estate for life, and to many a qualified Fee-simple. But the entire Fee and Right is not in him; and therefore he cannot discontinue the Fee-simple that he hath not, nor ever

nor ever had; for, *Omnis privatio præsupponit habitum.*

Omnia quæ movent ad mortem, sunt deodanda. If a man ride in a Chariot, and the Chariot fall upon him and kill him; the Horses, as well as the Chariot, shall be a Deodand. Coke l. 5. 190. *Foxley's* case. Stamf. l. 1. c. 12. fol. 20.

Omne testamentum morte consummatum est. The making of a Will is but an inception thereof, and it doth not take any effect till the death of the Devisor. Coke l. 4. fol. 60. *Forse* and *Hembling's* case. Lit. 112. b.

Omne majus continet in se minus. If a man be bound in a Bond for a sum of mony, to be paid at a certain day; and at the day, the Obligee ten- Coke l. 5. 114. *Wade's* case.

der more than the ſum; yet it is a good tender, for the reaſon above-ſaid.

Lit. Com. 43. *b.* *Omne majus trahit ad ſe minus.* The King cannot be ſaid to be a *Minor*; for when the Royall Body Politick of the King, doth meet with the naturall capacity in one perſon, the whole Body ſhall have the quality of the Body politick, which is the greater, and more worthy, and wherein is no minority.

Lit. Com. 112. *a. b.* *Omnia quæ ſunt uxoris, ſunt ipſius viri.* And therefore ſhe is diſabled to contract with any, without the conſent of the husband; neither hath ſhe power to diſpoſe of any perſonall eſtate in her own right. *Omnis*

Omnis ratihabitio retrotrahitur, & mandato aequiparatur. As if *A* disseize one to the use of *B.* who knoweth not of it, and *B* assent to it; In this case, till the Agreement, *A* was Tenant to the land; and after agreement, *B* is Tenant of the land: but both be disseizors. Litt. com. 180. b.

Oportet ut res certa deducatur in judicium. Player brought an action of Trespasse against one *W. Quare clausum suum fregit, & pisces suos cepit*; without shewing the number or nature of the fishes; and it was resolved, that the Count should have comprehended the fishes in certain, Coke. l. 5. fol. 321. *Players* case.

certain, that the Defendant might have a certain Answer, and upon which, a certain Judgment might be given.

P

Litt. Com 123. a. *Pater est quem nuptiæ demonstrant.* And therefore if a Villain have a Bastard by a woman, and marrieth her; the Bastard is no Villain, because the Villain cannot be said to be his father, he being a Bastard.

Litt. Com 344. b. *Pendente lite nihil innovetur.* At the Common Law, if, hanging the *Quare impedit* against the Ordinary, for refusing of his Clark, and before the Church were full, the Patron brought a *Quare impedit*

impedit against the Bishop, and, hanging the Suit, the Bishop admit and institute a Clerk, at the presentation of another: In this case, if Judgment be given for the Patron against the Bishop, the Patron shall have a Writ to the Bishop, to remove the Incumbent, that came in, *pendente lite*, by usurpation. But since *West m.* 2. among other things, it is enquired, *Ex officio*, if the Church be full, and of whose Presentation.

Perspicuè vera non sunt probanda. The Lord *Cook*, in his Commentary upon *Littleton*, observes, that Mr. *Littleton* never citeth any Authority through his

Litt. Com. 16. b.

his whole Book, but when the case is rare, or may seem doubtfull; which appeareth in this, that he putteth no Case, but hath warrant of good authority in Law. The like of Justice *Fitzherbert*, in his *Natura Brevium*, that he never citeth authority, but when the Case is rare or doubtfull.

13 H. 7. 10. *Stamf.* l. 1. c. 45. 21 E. 4. 71.

Plus peccat author, quam actor. If one be present at the death of a man, and incite another to strike and kill him; by this he is principall, as well as he that killed him.

Litt. com. 14. 6.

Possessio fratris de fœdo simplici, facit sororem esse hæredem. A man seized of lands in Fee-simple, hath issue a son and a daughter by

by one venter, and a ſon by another venter, and dieth; and the eldeſt ſon enters, and dies without iſſue; the daughter ſhall have the land, and not the youngeſt ſon. The like of an Uſe.

Propinquior excludit propinquum, & propinquus remotum, & remotus remotiorem. And therefore the father's brother, and his poſterity, ſhall inherit before the grandfather's brother, and his poſterity. lb. 10. b.

Proximus ſum egomet mihi. And therefore in Legacies, it is reaſon, that the Executors ſhall have præferment of ſatisfaction before others; and the Law maketh allowance

to

to them before any others.

Q.

Litt. Com. 55. a. 153. a. Coke Rep. Lyford's case.

Quando lex aliquid concedit, concedere videtur & id, sine quo res esse non potest. If Lessee at will soweth the land, and the Lessor, after it is sown, and before the corn is ripe, put him out; yet the Lessee shall have the corn, and shall have free entry, egresse and regresse, to cut and carry away the corn.

Litt. Com. 223. b.

Quando aliquid fieri prohibetur ex directo, prohibetur & per obliquum. A Feofment upon condition, that the Feoffee shall not alien to such a one,

one, naming his name, is good. And, in this case, if the Feoffee infeoff *J. N.* of intent and purpose, that he shall infeoffe *J. S.*; some hold this a breach of the condition.

Quando jus Domini Regis & subditi concurrunt, jus Regis præferri debet. If a man hold lands of the King by Knight-service, *in Capite*; and other lands of other Lords, and dieth, his Heir within age; The King shall have the Wardship of all the lands, by his prerogative. Litt. Com 77. a.

Qualibet hæreditas naturaliter ad hæredes hæreditabiliter descendit; nunquam naturaliter ascendit, nisi à latere. If there be father, uncle, and son; Litt. Com 11. a.

and

and the ſon purchaſe land in fee-ſimple, and die without iſſue, living his father; his uncle ſhal have the land, as heir to the ſon.

14 E. 3: Fitz. 1. Kitchin. fol. 134. a. *Quæ in partes dividi pequeunt, ſolida à ſingulis præſtentur.* If my Tenant, that holdeth of me by a Harriot, alien part of the land to another; every one of them ſhall pay Harriot, becauſe it is an entire thing.

Litt. Com. 42. a. *Qualibet conceſſio fortiſſimè contra donatorem interpretanda.* If Tenant in Fee make a Leaſe for life, without mentioning for whoſe life; it ſhall be taken for the life of the Leſſee, and ſhall be taken more ſtrongly againſt the Leſſor. *Qui*

Qui non habet in ære, luat in corpore. And therefore the law hath provided severall executions for the executing of the Law; and he that hath not to pay of his goods, &c. must suffer in his body by imprisonment. Hobart's Rep. fol. 133.

Qui ex damnato coitu nascuntur, inter liberos non computentur. A man makes a lease to *B.* the remainder to the eldest, issue male of *B.* and the heires males of his body: *B.* hath issue a bastard son; he shall not take the remainder, because in Law he is not his issue. Lit. Com. 3. b. 78. a. 123. a.

Qui hæret in litera, hæret in cortice. The statute of *Glouc.* c. 5. which giveth the action of wast against

against the Lessee for life, or years (which lay not against them at Common Law) speaketh of one that holdeth for tearm of years in the plurall number; and yet though it be a penall Law whereby treble dammages, and the place wasted shall be recovered, yet tenant for half a year being within the same mischief, shall be within the same remedy, though out of the letter of the Law.

Litt. Com. 161. a. 26 Ass. 17. 3 E. 4. 2.

Qui adimit medium, dirimit finem, And, *Qui obstruit aditum, destruit commodum.* And therefore, if a man be disturbed to enter & manure his land, this is a disseizin of the land it self.

Qui

Qui peccat ebrius, luat sobrius. A drunkard who is *voluntarius dæmon* hath no priviledge thereby, but what hurt or ill soever he doth, his drunkenesse doth aggravate it. Litt. Com. 247. a.

Qui per alium facit, per seipsum facere videtur. If the master command the servant to goe to the Land, and make claime there to avoid the discent; if the servant doth all that which is commanded, and which his Master ought to doe, there it is as sufficient, as if his Master did it himself. Litt. Com. 258. a.

Qui semel Actionem renuntiavit, amplius repetere non potest. A *retraxit* is a bar of all actions of like or Litt. Com. Coke l. 8. f. 58. *Beecher's* case.

or inferior nature.

Coke. l. 5. 99. *Rooke's* case. c l. 5. 24. Dean and Chapter of *Windsors* case. Hob. 4. f.

Qui sentit commodum, sentire debet & onus. The Commissioners in the Commission of Sewers, ought to tax all which are in dammage, or in danger of dammage, and not onely him which hath the lands next adjoyning to the river: for it may be that the rage and force of the water might be such that the value of the land adjoyning would not serve to amend it, therefore the statute would have all in perill, and which take commodity by the making of the Bancks, to be contributary to the amendment thereof.

6 H. 6. c. 5.

Quod abinitio non valet, tractu

tractu temporis non convaleſcet. Tenant for life of a carve of Land, the reverſion to the father in fee, the Son and Heir apparent of the Father indoweth his Wife of this carve by the aſſent of the Father, the Tenant for life dyeth, the Husband dyeth, the reverſion was a Tenement in the father, & yet this is no good indowment, *ex aſſenſu patris* becauſe the father at the time of the aſſent had but a reverſion expectant upon a freehold, (whereof he could not have indowed his own Wife) though the Tenant for life dyed, living the Husband.

Quod prius eſt tempore, Litt. com. *potius* 14. a.

potius est jure; &, Quod prius, dignius. And therefore, among the males, the eldest brother and his posterity, shall inherit lands in fee simple, before any younger brother or any descending from him.

Litt. Com. 49. b. *Quod semel meum est, amplius meum esse non potest.* And therefore, If a man let land for a term of yeares, the remainder over to another for life, or in taile, or in fee; in this case it behoveth the Lessor to make livery of seizin to the Lessee for years, or herwise nothing passeth to them in the remainder, although the Lessee enters into the tenements. And if the termor

mor in this case enter before any livery of seizin made to him, then is the freehold, and also the reversion, in the lessor. And if the Lessor afterwards make livery to the Lessee, it is void, for by the entry of the Lessee he is in actuall possession, and livery cannot be made to him that is in possession.

Quod semel placuit in electionibus, amplius displicere non potest. If a man grant by his deed a rent charge to another, and the rent is behind, the grantee may bring a writ of Annuity or distrain at his election, but he cannot have both together. For if he recover by a writ Litt. Com 146. a.

writ of annuity, the land is discharged of the distress. And if he distrain for the arrearages, and the Tenant sue a Replevin, and the grantee avow the taking of the distress in the land, in a Court of record; then is the land charged and the person of the Grantor discharged of the Action of Annuity.

Litt. com. 14. 7. a. *Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est.* If a rent be granted out of the Mannor of *D.* and the grantor grant over, that if the rent be behind, the Grantee shall distrain for the same rent in the mannor of *S.* this is but a penalty

nalty in the mannor of *S.* For the law needs not to make construction, that this shall amount to the grant of a rent, for here a rent is expresly granted to be issuing out of the Mannor of *D.* and the parties have expresly limited out of what land the rent shall issue, and upon what land the distress shall be taken, and the Law will not make an exposition against the expresse words and intention of the parties.

Quod constat clarè, non debet verificari. In a fol. 33. *Quod permittat* if it appear to the Court that the Nusance is to the damage of the Plaintiff, he

Coke, l. 9. *Batens* case.

need not shew it specially; as if the house of the Defendant hangeth over the House of the Plantiff's.

Litt. Com. 12. a. Ployd. 47. Sir Edw. Clere's case.

Refert, à quo fiat perquisitum. None shall inherit any lands as heir, but only the blood of the first purchator.

Coke 15. f. 76. Paget's case.

Remoto impedimento, emergit actio. If tenant for life, remainder for life, the remainder in fee, make waste in Trees, and after he in remainder for life dye, an action of waste is maintainable by him in the remainder in fee, for the waste done in the life of him in remainder for life, because to the disinheritance of him in remainder in fee; and now the

the impediment, which was the meane estate for life, is taken away.

Repellitur à Sacramento infamis. If a Juror be attainted or convicted of Treason, or Felony, or of any offence to life, or member; or in attaint for a false verdict, or for perjury be adjudged to the Pillory, or the like; or to be branded, or stigmatized, or to have any other corporall punishment, whereby he becommeth infamous; these and the like are principal causes of challenge. Litt. Com. 158. a.

Res inter alios act a alteri nocere non debet. And therefore if a lessor by Covin suffer a common recovery, the Lessee may falsifie Litt. Com. 152. b.

ſifie it by the Stat. of 14 E. c. 1.

S.

Coke. l. 4. 105: Birchlye's caſe.

Senſus verborum ex cauſa dicendi accipiendus eſt; & ſermones ſecundum ſubjectam materiam: & ſermo relatus ad perſonam intelligi debet de conditione perſonæ. The Defendant ſaid to *B.* Clerk of the Kings bench, (and ſworn to deale duely without corruption,) You are well known to be a corrupt man, and to deal corruptly, adjudged that the action lyes, becauſe the words *ex cauſa dicendi* imply, that he hath dealt corruptly in his profeſſion.

Sempa

Semper præsumitur, pro legitimatione puerorum. Lit. 126. a. And therefore if the Husband be within the four Seas, that is, within the Jurisdiction of the King of *England*, if the Wife hath issue, no proof is admitted to prove the child a bastard.

Si mulier nobilis nupserit ignobili, desinit esse nobilis. Litt. 16. b. Coke. l. 6. 53. l. 4. 18. b. If a woman gaine Nobility by Marriage, if she marry under the degrees of Nobility, she loseth it; otherwise, if Noble by descent.

Solus Deus facere potest hæredem. Litt. com. 7. b. 22. b. And therefore during the life of the Father he cannot be heire, but heir apparent. And therefore a lease for life,

the remainder to the right heirs of *I. S* : if Tenant for life dye, living *I. S*, the remainder cannot rest, there being no heirs of *I. S*, but only apparent.

Litt. Com. 310. *b.* 373. *b.* *Stabitur præsumptioni, donec probetur in contrarium.* If a man plead the Feoffment of a Mannor; he need not plead an Atturnment of the Tenants, for that shall be presumed, till it be shewn to the contrary.

T.

Litt. Com. 112. *b.* *Testamento cùm duo inter se pugnantia reperiuntur, ultimum ratum est.* In one Will where there be.

be diverſe deviſes of one thing, the laſt deviſe taketh place.

Traditio loqui facit chartam. A Leaſe dated 26. *May.* 25, *Eliz.* to hold from three years henceforth, it was delivered at three of the clock in the afternoon of the 20th of *June* after, from henceforth ſhall be taken the day of the delivery *inclusivè*, for the day of the delivery is parcell of the terme; but *à die confectionis*, or *à die datus*, the terme beginneth the day after the date. Coke l. 5. f. 1. *Clayton's* caſe.

V.

Vana eſt potentia quæ nunquam venit in actum. Tenant Coke l. 2. fol. 50.

Cholmley's case. nant in Tail, the remainder in Tail, the remainder bargains and sells the land, and all his estate, to *J. S.* for the life of Tenant in Tail, the remainder to the Queen; the remainder to the Queen is void, because the Grantee, for life of Tenant in Tail, took nothing; for it is a void Grant. And a remainder, *dicitur, quasi terra remanens*, which cannot be here. And the remainder must take effect when the particular estate ends; and here it never begins. *Et vana est illa potentia, quæ nunquam venit in actum.*

Coke. l. 4. fol. 43. Syers case. *Ubi factum nullum ibi fortia nulla, & ubi non est principalis non potest esse acces-*

acceſſarius. If the principall be pardoned, or hath his Clergy, the Acceſſary cannot be arraigned; for none can be principall before it be ſo adjudged by Law; *viz.* by Judgment upon Verdict or Confeſſion, or by Outlary. And it ſufficeth not, that in truth he be principall, and the acceptance of pardon, or prayer of Clergy is an argument, but no judgment in Law, that he is guilty.

Ubi eadem ratio, ibi idem jus. If two men do a treſpaſſe to another, who releaſes to one of th m, by his Deed, all actions perſonall; and, notwithſtanding, ſueth an action of Treſpaſſe againſt the o- Lit. Com. 232. a. 191. a.

ther: the Defendant may ſhew, that the Treſpaſſe was done by him and by another his fellow; and that the Plaintiff, by his Deed, which he ſheweth forth, releaſe to his fellow all actions perſonals, and demand the Judgment. And yet ſuch Deed belongeth to his fellow, and not to him. But becauſe he may have advantage by the Deed, if he will ſhew the Deed to the Court, he may plead this. By the ſame reaſon may the Feoffor, if he is come by the Deed Poll, when he ought to have advantage by the Condition, compriſed within the Deed Poll.

Litt. Com. 32. a. *Ubi nullum matrimonium*

nium, ibi nulla dos. To the having of Dower it is neceſſary, that the Marriage do continue; for, if that be diſſolved, the Dower ceaſeth.

Verba accipienda ſunt in mitiori ſenſu. As, Thou art a thief, and haſt ſtollen a Tree, (ſpoken of another) it ſhall be intended a Tree ſtanding. Coke l. 4. 13.

Verba accipienda ſunt cum effectu. If lands be given to two men, and to the heirs of their two bodies begotten; the Donees have a joynt eſtate for the tearm of their lives, and yet they have ſeverall inheritances, inaſmuch as they cannot have an heir between them ingendred; the Law will, that their Cok. Rep. l. 4. f. 48. *Ognel's* caſe. Litt. Com. 183. *b.* 112. *b.* Coke l. 3. 23. Ployd. 197. *b.* 213. *a.*

eſtate

estate be such as is reasonable, according to the form and effect of the words of the Gift, *viz.* the heirs which the one shall beget of his body, by any of his wives; and so of the other.

Coke l. 6. fol. 20. *Gregorie's* case.

Verba æquivoca & in dubio posita intelliguntur digniori & potentiori sensu, secundum excellentiam. As if the speech or writing be of *I. S.* generally, it shall be intended of the father, where the father and son are both of a name. So, if of two brothers of one name, it shal be intended of the eldest; for these are more worthy. So, where the Statute of 4 & 5 *Phil. & Mar.* speaketh in any Court of Record, it shall be

be intended of the four Courts at *Weſtminſter*, becauſe the King's Atturney is Attendant there.

Verba relata hoc maximè operantur per referentiam ut inesſe videantur. As if the father infeoff the ſon, to have and to hold, to him and his heirs; And the ſon infeoffeth the father as fully, as the father infeoffed him: By this, the father hath a fee-ſimple. Litt. com. 9.b.

Verba chartarum fortiùs accipiuntur contra proferentem. As, If two joynt-Tenants grant a Rent of 10 s. the Grantee ſhall have a Rent of 20 s. out of the land.

Unumquodque diſſolvitur eo ligamine quo ligatur. In an Annuity, growing by preſcription, rien Litt. 5 H.7.33. 4 H. 7. 7. b.

arrear

arrear, is a good plea; for this preſcription is matter in fact: But in an Annuity by Deed, it is no good plea, without ſhewing an Acquittance.

Litt. Com. 322. a. b. *Ultima voluntas Teſtatoris perimplenda eſt, ſecundum veram intentionem.* If a man let lands deviſable to another for life, or for years, and deviſeth the Reverſion, by his Teſtament, to another, in Fee or in Tail, and dieth; and after, the Tenant commits waſte: He, to whom the Deviſe was made, ſhall have writ of waſt, although the Tenant never Attorn. And the reaſon is, for that the Will of the Deviſor may be perform'd, according to his intent. And if the

effect

effect of this ſhould lie upon the Attournment of the Tenant, then, perchance, the Tenant would never Attourn; and then the Will of the Deviſor ſhould never be perform'd. And for this, the Deviſee may diſtrain, &c. or bring an action of Waſte without Attournment.

Voluntas teſtatoris ambulatoria eſt uſque ad mortem. And therefore, if a man, at divers times, make divers Deviſes and Teſtaments, yet the laſt Deviſe and Will, made by him, ſhall ſtand, and the other are void: for the latter Will doth countermand the firſt. Litt. 112. a. b. Coke 1. 4. f. 60. *Forſe* and *Hemling's* caſe.

Volenti non fit injuria. Pop. 9. As if Leſſee for twenty years

years accept another Leaſe for ten years; the firſt Leaſe is void and gone, being the acceptance of the ſecond, is, in Law, the ſurrender of the firſt: and no wrong in the Leſſor, becauſe of the acceptance of the Leſſee.

Lit. Com. 227. a. *Utile per inutile non vitiatur.* If the Jury give a Verdict of the whole iſſue, and of more, &c. that which is more is ſurpluſage, and ſhall not ſtay Judgment.

Litt. com. 112. a. *Uxor non eſt ſui juris, ſed ſub poteſtate viri.* And therefore, during the Coverture, ſhe is diſabled to contract with any, without the conſent for the husband.

Rules

Rules and Principles of *Law*.

LAW is an Art of well ordering a civill Society.

Lawes, are Native or Positive.

Native, are those Laws, which are in us of themselves, and therefore unchangeable and perpetuall.

These are two-fold, like those two great Lights, which God hath set in the Firmament of our Heart, Nature and Reason. Bracton. l. 9. 23. 3 H. 6. 55.

The

Lex naturæ est ratio summa, insita in homini natura, quæ jubet ea quæ facienda sunt, prohibetque contraria.
Cic. l. 1. de legibus.

The Law of Nature is Soveraign Reason, fixed in mans nature, which ministreth common Principles of Good and Evill.

The Law of Reason is, that which deduceth Principles by the discourse of sound reason.

The rules of Reason are of two sorts; some taken from Forraign Learnings, both Divine and human; the rest, proper to Law it self.

Of the first sort are the principles and sound conclusions, from forraign Learnings.

First, from Divinity, the Doctrine of Religion.

34 H. 6. 40 *To such Lawes of the Church as have warrant in holy Scripture, our Law*

Law giveth credence.

1. The Sabbath-day is no day for Law-dayes: *Dies Dominicus non est juridicus.* If a *Scire facias*, out of the *Common Pleas*, bear Teste upon a *Sunday*, it is error. 1 Eliz. Dy. 168. F.N.B.17 f.12 E.4.8

Of Grammar.

2. *Words in construction, must be referred to the next Antecedent, when the matter it self doth not hinder it.*

An Indictment against *J. S. serviens J. D. de D. in Com. Mid. Butcher.* This is not good; for *Serviens* is no addition, and *Butcher* referreth to the Master, which is the next Antecedent. 9 E 4. 48. 32 H. 8. Dy. 46. b.

From Logick.

In the Maxim of Causes and Effects. 3. *The*

5 E.4.8.b. 7 El. Dy. 293. b. 13 El. 401. 13 E.4.10. b. 14 H. 7.2.

3. *The Cause ceasing, the Effect doth likewise cease.* The King granteth an Office to one at will, and ten pound-fee for life, *pro officio illo.* Now if the King put him from his Office, the Fee shall cease.

21 E.4.68 b. 14 E.3.14 b. 14 Ass. pl. 20. 3 E.3.84.

4. *Things are construed, according to that which was the cause of it.* One imprisoned, till he be content to make an obligation at an other place, and afterwards he doth so, being at large; yet he shall avoid it by duress of imprisonment.

33 Ass. pl. 7. 10 Eizl. Dy. 266. b.

5. *Things are construed according to that, which is the beginning thereof.* If a servant (departed out of his Master's service) kill his

his Master, upon malice that he bare him whilst he was his servant; it is petty Treason.

6. *And therefore a derived power cannot be greater, than that from which it is derived.* The Attorney of one that is disseized, cannot make claim of from the land, if the Disseizee himself durst have gone to the land. 6. Litt. 6. 28 Ass. pl. 4. 2 E. 4. 16.

7. *Things are dissolved as they be contracted.* An Obligation, or other matter in writing, cannot be discharged by an Agreement by word. 7. 19 E. 4. 1. 5 H. 7. 33. b. 5 H. 7. 7. b.

8. *Things grounded upon an ill and void beginning, cannot have a good perfection.* An Infant or Feme covert, make their Will, and publish it, and after 8. 10 El. Dy. 344.

after dying of full age or sole; yet the Will is nothing worth.

9. *He that claimeth paramount a thing, shall never take benefit nor hurt by it.* An Executor recovereth and dieth intestate. Administration of the first Testator is committed to *J. S.*: *J. S.* shall not sue execution upon this Recovery; for he is Administrator to the Testator paramount the intestate.

9.
2 & 3 El. Dy. 187.

10. *Things are construed according to the end.* Vouchee, upon a Grand *cape ad valentiam*, shall not lose the land, though he cannot save his default: For the Processe is onely to this end, to have him to appear.

10.
19 E. 4. 3.
13 E. 3. *Joynder in ayd.* 19.
50 Ass. pl. 2.

In

In the Maxim of Subjects and Adjuncts.

Where the foundation faileth, all goeth to the ground. A Church appropriated to a spirituall Corporation, becommeth disappropriate, if the Corporation be dissolved. 11. 3 E.3.74. b. 49 E.3.8:

Things incident cannot be severed. Lord and Tenant, by fealty and homage, the Lord releaseth his fealty; this is void: for fealty is incident to homage. 12. 7 E.4. 11. 12 El. 12. 381. Dy. 12 El. 12. 379. 19 H. 8. Br. Incidents. 34.

Things, by reason of another, are of the same plight. Two Coperceners make partition, and one covenants with the other to acquit the land. Now if the Covenantee abett his part, the Alienee shall have a Writ of Covenant. 31 E. 3. Aff. 441. 13. 42 E.3.3. 6 E. 6. Dy. 72 b. F. N. B. 21 b.

Prin-

Personall things.

14. *Cannot be done by another. Suit of* Court cannot be done by another.

7 H.4.19. 21 E.4.34

15. *They cannot be granted over, as matters of pleasure, ease, trust, and authority.* A license to hunt in my Parke, to go to Church over my ground, &c. cannot be granted over. So a warrant of Atturny made to one to deliver seizin, he cannot grant this his authority over.

12 H. 7. 25. 19 H 8.10 7 H.4.36. 11 3.4.1. 12 El. 179 Br. Licences. 25.

16. *They dye with the person.* When a corporall hurt or dammage is done to a man, as to beat him, &c. if he or the party beaten dye, the Action is gone.

2 H.8.12 1. 2. & P. & M. 114.

Among

Among the disagreeable arguments.

First from those that differ onely in a certain respect and reason, not indeed and in nature.

Things do inure diversly, according to the diversity of

Time. Lands given in Frank marriage reserving a rent, the reservation is void till the fourth degree past, and afterwards good. 17. 26 Ass. pl. 66.

Person, viz.

Of the same person. One that hath a rent-charge going out of the wive's lands, releaseth it to the Husband and his Heires, the Husband yet shall not have it, but it shall inure to him by way of extin- 18. 14 H 8. 6.

guiſhment onely, as ſeized in the right of his wife.

19. *Severall perſons.* A man makes a leaſe of a Mannor except an acre, this acre is no part of the Mannor as to the Leſſor, but as to him that hath right to demand the Mannor by an eign title, it remaineth parcell, and therefore he ſhall make no forepriſe in his writ.

1 & 2 P. & M. 104. 11 E. 4. 2.

Then from relatives.

20. *No man can do an act to himſelf.* And therefore if the Sheriff, ſuffer a common recovery, it is error, becauſe he cannot ſummon himſelf.

3 El. Dy. 188. 13 H 8. 22 Lit. 147. b

Of Compariſons from the equalls.

21. *Things are to be conſtrued*

ſtrued, ſecundum æqualitatem rationis. If two, four, or more men being ſeverally ſeized of land, joyn in a recognizance, all their lands muſt equally be extended. 26 Aſſ. pl. 37. Coke 136. Sir *Will. Herbert's* caſe. Bract. l. 1. c. 3. 23 H. 8. Fitz.

From the greater, and the leſſe.

The greater doth contain the leſſe. By a pardon of Murder, man-ſlaughter is pardoned. 22. 3 & 4 P. & M. Dy. 150. *b.*

A matter of higher nature, determineth a matter of lower nature. A man hath liberty by preſcription, and after taketh a grant of thoſe liberties by Letters Patents from the King, this determineth the preſcription: for matter in writing 23. 21 H. 7. 5. 33 H. 8. Dy. 50.

determineth a matter in fait.

24. *The more worthie draweth to it things of leſſe worthineſſe.* An adulterer, if he takes away another mans wife, and puts her in New cloaths, the Husband may take the wife with her cloaths.

11 H. 4. 31. 10 El. 321 b. 3 Eliz. 238.

And therefore,

25. *Things acceſſary are of the nature of the Principal.* A Servant procureth another to kill his Maſter: This is not petty Treaſon in the Servant, becauſe it is but felony in the other, which is the principall.

40 Aſſ. pl. 25. 7 H. 6. 19. b. 26 H. 8. Dy. 7. b.

26. *A Mans own words avoid when the Law ſpeaketh as much.* Lands given

30 Aſſ. pl. 8.

to two, & *uni eorum diutiùs viventi*, they make partition, and one dyeth, yet the leſſor ſhall have again the moyety of him that dyeth, for *uni eorum diutiùs viventi* are but idle words, becauſe (without them) the joyntenant by courſe of Law is to have all if he do ſurvive.

From the Rule of Method.

In things of Formality,

27. The Rule of the Regiſter.

The Generals muſt goe before, and the Specialls follow after. In a writ the generall ſhall be put in demand, and in plaint before the ſpeciall: as land before prede, paſture, wood, &c. wood be-

fore Alders, Willows, &c.

28. *The more worthy is to be set before the lesse worthy.*

ibid. The entire thing shall be demanded before the

ibid. moitie, part, or parts. The thing of greater dignity before that which is of lesse: as a Mease before Land, a Cattle before a messuage or manor.

Next are the precepts of Naturall Philosophy. Law

29. *respecteth the bonds of nature, As the Son may maintain his father, and one brother another.*

The Law judgeth and esteemeth of all according to their nature; both persons and their ages, things, actions, and the time of the doing them.

In persons. It looketh to the excellency of some, and giveth them singular priviledges, and preheminencies, above the rest. As to the King, the Queen his Wife, Noble-men and Peers of the the Realm: Also unto them of the Church.

It tendreth the weaknesse and d-bilities of others, As, *of men out of the Realm, or in prison, femes-Covert, (and therefore favoureth them for their Dowers,) infants, men unlettered, Ideots, &c.* If a disseizor die seized, the disseizee being all the while within age, Covert-Baron, in prison, or out of the Realm, it shall be no discent to toll the entrie of the disseizee. And

an Ideot, or man of non-sane memory may enter, or have an action to avoid their own Feoffments.

31. *It favoureth strangers not parties nor privies.*

1 El. 198. Lessee for years grants a rent-charge, and surrenders, yet the rent shall be paid during the years.

And therefore things done in anothers right.

A person Out-lawed, or Excommunicated, may have an Action, as Executor of another man.

32. *It disfavoureth other some.*

Aliens, neither born within the Realme, nor free Denizens, that they shall not participate of the Pri-

Priviledges, of naturall-born ſubjects.

Eſpecially Aliens that are enemies.

Alien enemies ſhall not have ſo much as a perſonall action, which other Aliens may.

Touching their Ages.

It holdeth 21 *their full age, to make good any act they do:* 14 *their age of diſcretion.* 33.

And therefore:

That a competent age to bind a man, in matter of marriage; 12 *to bind the woman;* 9 *to deſerve her Dower.*

In things.

It reſpecteth every one according to worthineſſe: 34.

As,

Life and liberty moſt;

the person above his Possessions; Freehold and Inheritance more than it doth Chattells; Reall Chattells more than Personall.

A Villain infranchised for an hour, is free for ever. So, if infranchised upon condition, the condition is void, and the infranchisement absolute.

35. *A matter in right, more*
5 E.3.88. *then a matter in Possession.* In Avowrie or Annuity, aid shall not be of a person, if the Plaintiff be seized by the hands of the same person, because it is of the person's own wrong to deny it. Otherwise, in a *Cessavit*, for that is in the right for the land.

36. *Yet it favoureth Possession,*

sion, where the right is equall. A man purchaseth at one time severall lands, holden of severall Lords by Knights-service, and dieth: the Lord that first can happe the Wardship of his heir, shall have it. 8 El 296.

It favoureth,

Matters of Profit and Interest largely; of Pleasure, Ease, Trust, & Authority, or Limitation, strictly. Way granted to Church over my land, extends not to any other but himself; for it is but an Easement. If the Sheriff behead one that should be hanged, it is felony. A Lease to *A* and *B*, &c. for their lives. *A* dieth, *B* shall have all during his 37. 13 H. 7. 13 12 H. 7. 25. 11 H. 7. 12. 35 H. 6. 58. 4 E. 6. 68. *b.*

his life, for it is an intereſt. But if a Leaſe be made to *J. S.* during the life of *A* and *B.* there, if one of them die, the eſtate is determined; for that is a limitation.

38. *Therefore, Theſe may be countermanded, ſo cannot thoſe.* A licenſe to come to my houſe to ſpeak with me. Goods bailed over, to deliver to *J. S.* or to beſtow in almes. A Letter of Attourney to deliver ſeizin. All theſe may be countermanded, before they be done. But if I preſent *J. S.* to a Church, I cannot after vary, and preſent anew; for, a kind of intereſt paſſeth out of me.

9 E. 4. 4. b.
1 E. 5. 2.
28 H. 8. Dy. 22.
4 E. 4. 2. ark. 19 b

It

39. *It favoureth matters of Substance, more then matters of Circumstance.* Pleas in Bar, and Replications, though the Plaintiff be afterwards Non-suite, make an Estoppell, for they are expresse allegations, and materiall. As, in Debt upon Obligation, if the Defendant plead in Bar an Acquittance made at *D.* Or, if the Defendant plead an Acquittance, and the Plaintiff reply, That it was made by duress of Imprisonment at *D.* Now in another action, neither the Defendant shall plead, that the Acquittance; nor the Plaintiff, that the duress, was at another place. But a matter

21 H. 7. 24. *b.* 33 H. 6. 10. *b.*

ter, in the Writ or Count, makes no Eſtoppell; for they are but ſuppoſalls.

20 H. 7. 11. 32 H. 8. Br. Darrein Preſentment:

Things executed and done, more then things executory and to do. A Feofment to the uſe of ones Will, if his Will be declared before, or at the time of his Feoffment; it cannot be altered, becauſe it is executed.

40.

It favoureth poſſibility of things. And therefore,

1 H. 4. 1. 15 H. 7. 10. 41 E. 3 11.

Nothing to be void, that by poſſibility may be good. A meſſualtie is given in Tail, reſerving a Rent; this is good: for, the Tenancie may Eſcheat to the Donee, and then the Donor ſhall diſtrain for all his arrerages.

It

It favoureth a mutuall recompence. An assumption or promise doth then onely bind, when it is made upon good consideration. 41.

In Actions,

It yieldeth favour, when for the doing of it there is necessity. 42. Br. Executor. 172

A man, in his own defence, for the necessity of the saving of his life; and a Champion, in a Writ of Right, for the necessity of Triall; may kill another.

Whither refer,

Conformity, which is a kind of necessity. Rent must be demanded, though no man be upon the land to pay it. 43.

Of Colour. If the heir in- 44.

41 E.3.28 22 Aſſ. pl. 64. indow the Anceſtors wife, though ſhe were not dowable, yet ſhe ſhall hold in Dower.

45. *It priſeth acts in Law higher, than thoſe that are done by the party.*

2. &.3.P M. 134. *b.* 29 Aſſ. pl. 23. 49 E.3.15. 2 H. 7.5. For equality of partition among Coperceners, a Rent granted, ſhall be a Fee-ſimple, without the word [heirs] and iſſuing out of the land, without ſo expreſſing it in the Grant.

46. *It reputeth, that men will alwaies deal for their own beſt advantage.*

And therefore,

47. *Believeth againſt the party, whatſoever is to his own prejudice.*

For the time of doing things;

It

It countenanceth more, 48.

Things done in time of peace, than in time of war. A Diſſeizin and Diſcent, in time of war, ſhall not toll the Entrie of the Diſſeized. Litt. 97. 7 E. 3. Darren preſentment. 2. F. N. B. 31. *b.*

Things done in the day, more than in the night. 49.

A man muſt not diſtrain in the night time, for Rent behind.

Where things are fit to be ſtraitned to a time, it eſteemeth according to the nature of the things.

Sometimes a whole day ſufficient. Where goods are loſt in war, and recovered from the enemy by another of the King's ſubjects, the owner ſhall have them again, if he make freſh ſuit, before 50.

the

the Sun ſet; elſe, not.

51. *Sometimes a whole year.* The Lord loſeth his Villain for ever, if a Villain flie into antient Demeaſn, and there continue a year and a day, without claim of the Lord.

52. *The third offence it eſteemeth more heinous.* The third Writ, not returned by the Sheriff, is a contempt, whereupon an Attachment lieth.

Politicall Precepts follow.

53. *The Law favoureth,*

8 E.4.18. *Things for the Common-*
b. 14 H.8. *weal.* Fiſhermen may ju-
25. 29 H. ſtifie their comming up-
8.Dy.36.*b* on the land adjoyning to the Sea, to dry their Nets; for, Fiſhing is for the

the Commonwealth, and ſuſtenance of all the Realm.

Publick quiet.

And therefore,

Common Error goeth for Law. Whether a common Recovery, be a Bar unto an Eſtate Tail, or no, is not to be diſputed; becauſe a great part of the Inheritance of the Realm doth depend upon it. 54. Ployd. *Manxel's* caſe. f. 2. 2 R. 3. 7.

Of this kind are thoſe Oeconomicks.

The Husband and the Wife are one perſon.

And therefore,

The Wife is of the ſame condition with her Husband Franck, if he be free; Denizen, if he be an Engliſhman, though ſhe were F.N.B. 78 Abridgement. Aſſ. pl. Brook. Deniſen. a

were a neife before, or an alien born.

55. *They cannot ſue one another, or make any grant unto the other, or ſuch like.* If a woman marry with her Obligor, the debt is extinct, and ſhe ſhall never have an action againſt the co-obligor, if another were bound with him; becauſe the ſuit againſt her husband, by entermarriage, was ſuſpended; and therefore being a perſonall action, and ſuſpended againſt one, it is diſcharged againſt both.

21 H. 7. 29 b. Perk. 40.

56. *Upon a joynt-purchaſe, during the coverture, either of them taketh the whole.* If the husband alien land, &c. ſo given, ſhe ſhall recover the whole

Litt. 65. 39 H. 6: 45. 21 H. 2. Judgement, 63.

whole in a *Cui in vita* after his death; and the Warrantie of one of them, or his Anceſtors, is a bar of the whole againſt them both.

The husband is the woman's head. 57.

And therefore,

All ſhe hath is her husband's. 58. If goods be given to a Feme-Covert, and another; the Joynture is ſtreight-way ſevered, and the husband and the other are Tenants in common; and the Executors of the husband ſhall have all the goods that were his wives. 21 H. 7. 29. Litt. 148. 14 El. Pl. 418. & 191. 16 E. 4. 8. 7 H. 6. 1. 39 H. 6. 27.

Her will is become his will, and ſubject unto it. 59.

It

If an action of Treſpaſs be brought againſt Huſband and Wife, and the wife come in by *Cepi corpus*, and the Husband doth not appear, ſhe muſt be let at large without any Mainprize, till her Husband doth appear; but he appearing may anſwer without her, therfore a protection caſt by the Husband ſerveth for the wife alſo, becauſe ſhe cannot anſwer without him.

Laſt, come the Morall Rules.

60. Litt. 158. *The Law favoureth right.* When two are in a houſe, or other tenements, and one lays claim by one Title, the other by another

another Title, the Law adjudgeth him in poſſeſſion that hath the right to have the tenements.

And therefore,

Suffereth things againſt the principles of Law, rather than a man to be without his remedy. The tenant ſhall have a replevin againſt the Lord that did wrongfully diſtrain, though the beaſts be come back to himſelfe, becauſe he can have no action of Treſpaſs againſt him. 61. F.N.B. 69 b. 4 H. 7. 40. 11 H. 7. 10.

Hateth wrong.

So that

No man ſhall take benefit of his own wrong. One in execution eſcapes, and the Jaylor gets him againe, 62. 13 H. 7. 1. 31 H. 6. 60. 27 H. 8. 11.

gain, the party if he will may have him to remain in execution for him ſtill, for the Eſcape is his own wrong.

And therefore,

63. 12 E.4.8. 48 E.3.17 *Of it ſelfe prejudiceth no man.* He that miſdemeaneth authority that Law giveth (as if one come into a Tavern, and will not goe out in ſeaſonable time; or diſtrein for rent and kill the diſtreſs) ſhall be a wrong doer *ab initio.*

35 H. 6.3. 38 H. 8. Br. *Eſpecially for things that cannot be imputed to his own folly.* The Lord Chancellor's Servant impleaded at the common Law, claimeth priviledge of the Chancery, and before

fore it be discussed, whether he shall have it or no, the Lord Chancellor dyeth: yet his priviledge is allowable still, for the act of the Court to advise of it, shall not prejudice him.

And therefore,

Driveth not a man to shew that, which by intendment he knoweth not. One bound in an Obligation to serve *J. S.* for seven years, *in omnibus mandatis ejus licitis*, shall plead that he did serve him lawfully, without shewing what service or in what Commandment; for no servant can remember all. 64. 10 E. 4. 15 2 Mar. 128 4 E. 6. 46.

Truth.

And therefore

It disfavoureth

Fraud and Covin.

65. 18 H.8.5. *If a woman hath good title of* Dower, and cause *I. S.* to disseize the Tenant of the Land, and recovereth her Dower against *J. S.* yet this is no good estate of Dower in her, for she is privie to an unlawfull act, which should be the meanes of her estate.

66. 1 Mar. Dy. 91. *Manxel's* case. 10.*b.* *Uncertainty*, whereby truth is inveigled. A man grants all his Trees and Wood upon black-acre that may reasonably be spared; this is a void Grant, unless it be referred to a third person's judge-

judgement, what may be spared.

Variance. 67.

If the writ varie from the Obligation, or other specialty, in name, surname, or such like in an action of debt and annuity brought upon it, or the Count vary from the Writ; As in an action of debt of 20l, and declare but a debt of 10l; both shall abate. 11 E. 4. 2. 4 Ass. pl. 2. 32 H. 6. 3. 7 H. 6. 22. 8 E. 4. 2.

Contrariety. In trespass *de domo fractâ & muris ejusdem domûs fractis.* The defendant cannot plead not-guilty to the breaking of the house, and justifie the breaking of the walls, for house and walls are all one; and he cannot 68. 21 E. 4. 36 4 E. 4. 29. 21 H. 7. 21 2 & 3 P. & M. 153.

of the ſame thing both juſtifie and plead Not-guilty, for by the juſtification he acknowledgeth himſelf guilty; ſo they are contrary.

And therefore

69. *It will not drive a man to juſtifie that he goeth about to defeat.* He that bringeth an Aſſize of the Maſterſhip of a Chappell againſt *J.S.* ſhall not need to name *J.S.* the Maſter of the Chappell, becauſe the Plaintiff is to diſprove his intereſt.

10 H.7.9.

Diligence.

And therefore

70. *It hateth folly and negligence.* A diſcent caſt during the Coverture, where the wife is diſſeized,

Litt. 95. 5 E.3. 222.

ed, barreth her not of her entrie after her husbands death: But if a Feme-sole be disseized, and then taketh a Husband, there a discent during the Coverture taketh away her Entry; for it was her folly to take such a Husband that entred not in time.

Speeding of mens causes.

And therefore,

It hateth delayes. He that pleadeth a record in delay, as to prove the Plaintiff excommunicate, must have it ready to shew; otherwise it is, if he plead it in bar. 71. 3 H.6.15. 12 H.7.3. 8 H.7.9. 2 H.6.1.

Unnecessary circumstances. One that is in Court ready to joyn with the Defendant, may doe it 72. 8 H.6.1. 1 H.6.4.

without proceſs. As the Vouchee the Plantiffs leſſor being praid in aid of, when the defendant in a replevin avoweth upon him, or the meſne when the Lord Paramount avoweth upon him. But joynder in aid, cannot be by Attorney without proceſſe.

73. *Manuel's caſe. f.7.b.* *Circuit of action.* Upon the grant of a ward with warranty, the Defendant in a writ of right of ward may rebutt the Plantiff by that warranty, and ſhall not be driven to bring an action of covenant, for avoiding circuit of action.

The Law conſtrueth things with equity and moderation.

And

And therefore, 74.

Restraineth a generall act if there be any mischief or inconvenience in it. Tenant for life lets to another for life without expressing whose lives; it shall be taken for the lessors own life, for else it were a forfeiture of his Estate. Litt. 110.

Moderateth the strictness of the Law it self. By abridging, diminishing, and taking away the severitie of it, and mollifying the hardness of it, A morall vertue, as *Plowden* calleth it, and may appear by *Aristotle*, who treating of it defineth it, *A certain correction of the Law, wherein it is any way wanting, be-* 75.

cause of the generality of it. It is no treſpaſs, to carry away a mans wife againſt his will to a lawfull end. As to ſue a divorce againſt her Husband, or to have the peace of him before a Juſtice of Peace.

To the beſt.

And therefore,

76. *Every act to be lawfull*
11 H.7.5. *when it ſtandeth indifferent to be lawfull or not.* In an action of treſpaſs, two iſſues are joyned triable in two Counties, One in *London*, another in *Middleſex* only, without ſaying which of the iſſues it ſhould try, this ſhall be taken to tryé the iſſue in *Middleſex* only: for ſo the *venire facias* is lawfull,

full, and not in both Counties, which is againſt Law. And therefore it is a diſcontinuance of the Iſſue in *London*, and not a miſ-continuance.

Thus far of Rules drawn from other Sciences. There follow thoſe that are proper to our ſelves, which we call Law conſtructions. And are, naturall, or fained.

Of the firſt ſort we have two notable grounds.

Law-conſtrueth things Reaſonably.

And therefore,

With a reaſonable intent.

A bargain and ſale of Land, and a reverſion, by deed not inrolled,

the Reversion passeth
21 H.7.5. not, no more than the Land, though the Deed, without Inrolment, may passe the Reversion; but it was meant, they should passe together.

78. *According to the effect.*
1 H. 6. 4. A Deed delivered by an Infant, cannot be delivered again at his full age; for, it took some effect before, and was but voidable. Otherwise, of a Feme Covert, or a Release of one that hath nothing in the land; for here the first Delivery was meerly void.

79. *So that he that cannot have the effect of a thing, shall not have the thing it self.* The King shall not be

be received upon default of Tenant for life; because the Demandant cannot have the effect of the Receipt; *viz.* to count against him, which none can do against the King, but sue to him by Petition. 4 Eliz. 241.

To the most validity. 80.
Tenant in tail, makes a Leaſe for life; this ſhall be intended the Leſſee's life. Lit. 140. b.

And therefore,

When any joyne in an act, it maketh it his act that may do it. The Diſſeizee, and the heir of the Diſſeizor, in by diſcent, make a Feoffment by one Deed and Livery; 81. Litt. 5 & 7 El. Dy. 191.

ry; this is the Feoffment of the Heir onely, and confirmation of the Disseizee.

82. *When two Titles concur, the best is preferred.* One is disseized, and the disseizor lets the land to the Disseizee for term of years, or at will: Now, if he enter, the Law shall say, he is in of his antient and best title.

Litt.

83. *Things to be done, by him that hath most skill to do them.* An Obligation upon Condition, that the Obligee shall bring to the Obligor's shop (being a Tailor) three yards of cloth, which shall be shapen, and the Ob-

9 E. 4. 4.
4 E. 6. 15.
4 El. 230.
Lit. 22.
11 E. 4. 36

Obligor to make the Obligee a Gown of it; the Obligor must shape it. So, a Merchant agreeth with the King's Collectors, that his Merchandise shall be weighed at the King's Beam, and the King shall have his Subsidie as it riseth; the Collector must weigh it.

Void things, good to some purpose. 84. A Feoffment upon Condition to be void, as if it had never been, yet the Feoffee shall have an Action of Trespasse, after the Feoffor's entry, for the Condition broken, for a Trespasse done by the Feoffor before. 10 H. 7. 22 I. & 2. P. & M. 107.

One thing to enure as 85.

ano-

21 H.7.13 another. The King grants
15 H.7.7. to a Town, *easdem liber-*
37.H.6.4. *tates quas* London *habet*; it shall be intended the like. The Lessor infeoffeth his Lessee for life, by *Dedi, & Concessi*; this shall inure as a confirmation.

86. *In one thing, all things*
2 R. 2. *pursuant to be included.*
Barr. 309. Upon a Grant of Trees, the Grantee may come upon the land to cut them down, and with his carriage carry them thorough the land. And the
14 H.8.1. Vendee of all ones fishes
10 E.3.17 in his pond, may justifie the comming upon the banks to fish, but not the digging of a trench to let out the water, to take

take the fish; for he might take them by Nets, and other devices. But if there were no other means to take them, he might dig a trench.

Strongest against him that doth them. Two Tenants in common grant a Rent of 20 s. the Grantee shall have forty shillings. But if they reserve twenty shillings upon a Lease, they shall have onely one twenty shillings. 87. 2 & 3 P. & M. 130. b. 161. b.

And therefore,

A man shall not qualifie his own act. As, if the Obligee releaseth his debt till *Michaelmas*, the debt is gone for ever. So, a revertion of three acres of 88. 21 H. 7. 23. b. H. 7. 8. H. 6. Dy. 42. b.

18 E. 3. 53
17 Eliz. Dy. 339.

of land is granted, the tenant atturns for one; it is a good atturnment for all.

The construction which otherwise Law would make, is altered by the parties.

89. 40 E. 3. 5. Peck. 55, 56.

Speciall agreement. Leſſee for years is excuſed for waſte, if the houſes be blown down by ſuddain ſtorm or tempeſt. But in that caſe, if he covenant to keep reparations, an action of covenant lies againſt him.

90. 27 H. 8. 18 30 H. 8. Dy. 42. *b.*

Speciall words. As, a Leaſe reſerving a Rent, the heir of the Leſſor, after his death, ſhall have the Rent; otherwiſe, if the Leaſe be reſerving to the Leſſor. *Sur-*

Surplusage of words. An information upon a Statute, made such a day, and the day is mistaken, is nought, though he needed not to have recited the day. 91. 6 E. 6. 84. 9 E. 4. 28. b. 9 El. Dy. 255. b.

A fained construction, which we call a fiction in Law, is, when in a similitudinary sort, the Law construeth a thing otherwise, than it is in truth; and is of the person, thing, action, and the circumstances thereof, time, and place.

Of the person.

Things done by another, are as if they were done by one's self. A promise to one's wife, in consideration of a thing to be performed by the husband; 92. 27 H. 8. 24.

if

if the husband, upon his comming home, agree and perform the consideration, he may plead this promise as made to himself. So, if my servant sell my goods, and I agree; I shall have an action of debt, supposing he bought of me.

Of the thing, we have these two Rules.

93. 18 E. 3. rec. in val. 26 48 E. 3 11. 6 H. 4. 1. *A thing that commeth in lieu of another, to be as if it were the same.* One shall recover in value against the heir, (upon the Ancestor's Warrantie) lands, which the heir took in exchange for lands descended.

94. *A thing to be all one with that, whereunto it doth amount.*

amount. The Maxim of a Baſtard eigne, is, that the mulier puiſne muſt make an entry upon him, or elſe he gaineth the right; yet, a continuall claim, made by the *mulier puiſne*, deſtroyeth his right, for it amounteth to an Entrie. So, a Leaſe for years, and a Releaſe, amount to a Feoffment. 14 H 4.9. 14 H.8.13 5 H. 7. 1.

And therefore,

A thing that ſhould not be done, to be as if it were not done. A man makes a Leaſe for years of a houſe, with certain implements, reſerving a Rent. The Executors, after the Teſtator's death, receive the Rent, yet it is no aſſetts in their hands; for the whole 95. 20 El. Dyer.362. 18 El. Dyer.362.

whole Rent belongeth to the Heir.

96. *So, of a thing done in a time that it ſhould not.* A man ſeized in fee, lets for ten years, and after ſelleth the land, and taketh it back to him and his wife; and then the husband and wife let it for 20 years, reſerving a Rent. The husband dieth, the wife accepts this rent, during the firſt ten years. By this, the ſecond Leaſe is not affirmed, for the acceptance of a Rent before the Leaſe beginneth, and ſo before any Rent be due, is no acceptance at all.

1 E. *b.* Br. 18.

21 El. 563

To the circumſtance of Time, theſe two Rules pertain.

Priority

Priority of time is imagined in things.

Done together. One deviseth a term for years to his son, and that the wife shall have it during the son's minority. This is first a Devise to his wife, and after to the son when he commeth of full age. 97. 21 El. 540

Happening in an instant. A Mesualty descends to the Tenant of the land: Though the Mesualty be at the same time and instant extinct; yet the Tenant shall pay relief, if he be of full age; or be in Ward, if he be within age; *viz.* where it is holden by Knight's service. 98. 11 H. 7. 12 7 H. 46. 9 E. 4. 21.

Things relating to a time long before, be, as if they were done immediately from 99. Lit. 92. 36 H. 6, 7.

from that time. Where the wife is endowed by the heir of the husband's lands, she shall be said to be in, immediately from the husband. And therefore if the husband were a Disseizor, and the heir in by discent; yet the Disseizee may enter upon the wife.

These Rules of common reason, do many times crosse and encounter one another, which is the greatest difficulty that is found in the arguing of Cases. But, to help this, the generall ground is, according to the former Rule, that,

100. Litt. 110. b. 140. b. *Those prevail, that carry the more excellent and perfect reason with them.*

32 H. 8. Tenant for life makes a Lease

Leaſe for life, without naming whoſe life; this ſhall be intended for his own life, (*Rule* 74.) for elſe, it were a wrong. But if Tenant in tail make ſuch a Leaſe for life, this is a diſcontinuance, and for life of the Grantee, (*Rule* 86.) for it is ſtrongeſt againſt the Grantor, and moſt beneficiall for the Grantee:

Br. gar. 18. 28 E. 3. 20. *b.* Br. gar. 17. 35 H. 6. 3. 9 El. Dy. 264. *b.* 11 H. 7. 9. Perk. 41. 13 H. 8. 15. 7 H. 4. 9.

FINIS.